

STATE OF CALIFORNIA
THE RECLAMATION BOARD
REGULAR BOARD MEETING
OPEN SESSION

RESOURCES BUILDING
1416 NINTH STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

Friday, November 16, 2007

8:32 A.M.

KATHRYN S. SWANK, CSR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 13061

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President

Mr. Butch Hodgkins, Vice President

Ms. Lady Bug Doherty, Secretary

Ms. Rose Marie Burroughs, Member

Ms. Teri Rie, Member

Mr. John Brown, Member

Ms. Emma Suarez, Member

STAFF

Mr. Jay Punia, General Manager

Mr. Stephen Bradley, Chief Engineer

Mr. Eric Butler, Senior Engineer

Mr. Dan Fua, Supervising Engineer

Ms. Nancy Finch, Legal Counsel

Ms. Lorraine Pendlebury, Staff Assistant

ALSO PRESENT

Mr. Paul Brunner, TRLIA

Mr. John Carlin, River Partners

Mr. Jay Chamberlin, California Resources Agency

Mr. Joe Countryman, MBK Engineers

Ms. Kim Davis, Senator Sam Aanestad

APPEARANCES CONTINUED

Mr. Daniel Efseaff, River Partners

Mr. Tom Ellis, Sacramento River West Side Levee District,
self

Mr. Mark Hennelly, California Outdoor Heritage Alliance

Mike Inamine, Department of Water Resources

Ms. Ashley Indrieri, Family Water Alliance

Ms. Carolyn Langenkamp, self

Mr. Eric Larrabee, Levee District 3

Mr. Merrit Rice, Department of Water Resources

Mr. Thomas Rice, Rice River Ranch

Mr. Scott Shapiro, TRLIA, Reclamation District 2126

Mr. Mark Spannagel, Assemblyman LaMalfa

Mr. Patrick Tully, Sacramento River Property Association

Mr. Gregg Werner, The Nature Conservancy

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1 PROCEEDINGS

2 PRESIDENT CARTER: Good morning, ladies and
3 gentlemen. Welcome to the State Reclamation Board meeting
4 for November. We would like to welcome everyone here.
5 This is our closed session that we will begin for this
6 meeting. So we will enter into -- actually, let's have
7 roll call, Item No. 1. Mr. Punia, could you call the
8 roll, please.

9 GENERAL MANAGER PUNIA: General Manager Jay Punia.
10 Except Board Member Teri Rie, the rest of the
11 board members are present.

12 PRESIDENT CARTER: Thank you very much. Then we
13 will -- Item 2, closed session to discuss litigations, the
14 Natural Resources Defense Council, Case No. 06CS01228.
15 And the closed session is pursuant to Government Code
16 Section 11126(e)(2)(A).

17 (Thereupon the Board entered into closed
18 session.)

19 (Thereupon a break was taken in
20 proceedings.)

21 PRESIDENT CARTER: Ladies and gentlemen, welcome
22 to the State Reclamation Board meeting. Let the record
23 reflect that the Board did meet in closed session this
24 morning at 8:30 to discuss litigation under our agenda
25 Item No. 2.

1 We are new on Item No. 3 in the agenda, which is
2 to approve the meetings for August 17, 2007, September 11,
3 2007, and September 21st, 2007.

4 Mr. Punia?

5 GENERAL MANAGER PUNIA: Jay Punia, General Manager
6 Reclamation Board. I want to request the Board that the
7 September 11th for the subcommittee meeting, that only the
8 subcommittee members should vote for the September 11th,
9 2007.

10 PRESIDENT CARTER: Okay. Does everyone understand
11 that the September 11th minutes were for the TRLIA
12 subcommittee meeting? So the subcommittee members, who
13 are Member Hodgkins, Member Doherty, and myself, should
14 vote on that.

15 SECRETARY DOHERTY: I make a motion that we
16 approve the minutes of August 17th and September 21st.

17 PRESIDENT CARTER: We have a motion.

18 VICE PRESIDENT HODGKINS: Second.

19 PRESIDENT CARTER: There's a second.

20 I do have a couple suggestions of the -- just a
21 couple editorial things.

22 For August 17th, on page 6, under Item 13, second
23 paragraph, "Reclamation Board staff will conduct a similar
24 symposium." I think that should read, "Reclamation Board
25 staff will attend a symposium on vegetation on August

1 29th."

2 SECRETARY DOHERTY: That is September 21st?

3 PRESIDENT CARTER: No, August 17th.

4 SECRETARY DOHERTY: Oh, August 17th.

5 PRESIDENT CARTER: August 17th, page 6.

6 And then also under Item 13, the seventh paragraph
7 starts out as "General Manager Punia further stated
8 that" -- the last line of that starts "cross-canal and to
9 TRLIA for the Feather River Levee setback Segments 1 and
10 3." I think that should read, "Feather River levee
11 repairs, Segments 1 and 3." So those two changes are what
12 I would suggest.

13 And then on the 21st on page 8, under Item 15,
14 Report of the Activities of General Manager, the first
15 paragraph says, "General Manager Punia presented a
16 briefing of the vegetation symposium and roundtable."
17 Actually, I believe what occurred was, "General Manager
18 Punia presented a joint communique from the participants
19 of the levee roundtable."

20 And then the other suggestion I'd make, on the
21 second line, "The following agencies were represented in
22 the roundtable discussion." And then on the second --
23 under the second paragraph, "In the meantime, the Corps
24 will not decertify a levee for PL 84-99 due to
25 noncompliance as a result of vegetation while the plan is

1 being developed." They made it very clear that they will
2 decertify for the other 79 criteria that they do inspect
3 for.

4 Those are my suggested changes to both the
5 September -- the August 17th and September 21st minutes.

6 SECRETARY DOHERTY: Then I make a motion that we
7 approve the minutes with the changes.

8 VICE PRESIDENT HODGKINS: I will second.

9 PRESIDENT CARTER: Okay. So we have -- the motion
10 and a second have accepted those changes.

11 Any other discussion?

12 All those in favor, indicate by saying "aye."

13 (Ayes.)

14 PRESIDENT CARTER: And opposed?

15 The motion carries.

16 SECRETARY DOHERTY: And I will make a motion that
17 we approve the minutes for September 11th.

18 PRESIDENT CARTER: We have a motion for
19 September 11th.

20 VICE PRESIDENT HODGKINS: I will second.

21 PRESIDENT CARTER: And we have a second.

22 If you will indulge me one more time, I do have a
23 change on those as well, on page 4, third -- fourth
24 paragraph down, it says, "Mr. Carter asked how many of the
25 1749 acres are being acquired under the due condemnation

1 process." I think that we should delete the word "due",
2 and it should read "the 1749 acres that are being acquired
3 under the condemnation process."

4 That's the only suggestion I have for the
5 September 11th subcommittee minutes.

6 SECRETARY DOHERTY: All right. Then with those --
7 with that correction, I will make a motion that we accept
8 the minutes.

9 VICE PRESIDENT HODGKINS: Second.

10 PRESIDENT CARTER: I got a motion and a second.
11 Any other further discussion?

12 All those in favor, indicate by saying "aye."

13 (Ayes.)

14 PRESIDENT CARTER: And opposed?

15 Motion carries.

16 MEMBER BROWN: Mr. Chairman, for the record, I did
17 not vote on either of the last two items since I was not
18 there.

19 PRESIDENT CARTER: Okay. So let the record
20 reflect that Member Brown did not vote on any of the items
21 under agenda Item 3.

22 Very good. Moving on to Item 4, approval of the
23 agenda for today.

24 Mr. Punia, do you have some suggestions?

25 GENERAL MANAGER PUNIA: Yes. Item 6, Report of

1 Activities of Department of Water Resources, instead of
2 Keith Swanson, Mike Inamine will present this item.

3 Item No. 11, I think based upon our counsel and
4 the counsel from the attorney general, we are recommending
5 to Board that we postpone Item No. 11 for a future date.
6 We'll bring it back to the Board for its consideration
7 either at the December meeting or at a later date.

8 Those are the two changes on the agenda.

9 PRESIDENT CARTER: Are there any other suggestions
10 in terms of changes to today's agenda?

11 MEMBER SUAREZ: Mr. President, not necessarily
12 changes, but actually an inquiry, if now's the appropriate
13 time.

14 PRESIDENT CARTER: Please.

15 MEMBER SUAREZ: I notice under the agenda, we did
16 not include an update or an opportunity to be briefed on
17 the Atlas Tract discussion that we had last month. And
18 again, that was a very intense discussion with a lot of
19 factual allegations that were made. But I certainly was
20 hoping for the opportunity to debrief to clarify since
21 we're going to be making a decision regarding a separate
22 issue regarding this applicant.

23 So I would -- I am suggesting and asking that the
24 Board consider a separate briefing and really get, as soon
25 as possible, the record clear about what the situation is

1 regarding the private levee.

2 So thank you.

3 PRESIDENT CARTER: Okay.

4 MEMBER BROWN: Mr. Chairman?

5 PRESIDENT CARTER: Yes, sir.

6 MEMBER BROWN: I concur. If that discussion we
7 had last time might hold up that project unnecessarily, we
8 should consider that.

9 PRESIDENT CARTER: Okay. My understanding is that
10 the Board intends to having a discussion regarding the
11 investigation and an investigation regarding the Atlas
12 Tract and what happened with regard to the improvements
13 that the local reclamation district did perform on their
14 levees.

15 The reason that it's not on this month's agenda is
16 that there were some other pressing items that appeared to
17 be a more critical path in terms of addressing permits,
18 and the staff was engaged in trying to process those
19 permits.

20 So we have postponed the investigation, but it
21 will take place. And we will work with the applicant to
22 not only perform the application but make sure we don't
23 delay the project there.

24 Okay. So we have a couple suggested changes.

25 Item 6, Mike Inamine will be presenting on behalf

1 of DWR in place of Keith Swanson; and a suggestion to
2 postpone Item No. 11 to a later meeting.

3 Any other suggested changes?

4 So we will entertain a motion to approve the
5 minutes or approve the agenda for today with those
6 changes.

7 MEMBER SUAREZ: So moved.

8 PRESIDENT CARTER: Have a motion.

9 A second?

10 MEMBER BURROUGHS: Second.

11 PRESIDENT CARTER: A motion and a second.

12 Any further discussion?

13 All those in favor, indicate by saying "aye."

14 (Ayes.)

15 PRESIDENT CARTER: And opposed?

16 Motion carries.

17 Very good.

18 Now is the time, Item No. 5, it's public comment.

19 This is a time when the Board invites members of the
20 public to address the Board on any issue that they would
21 like to as long as it's not agendized for today. We do
22 ask that folks please fill out these white 3-by-5 cards so
23 that we do know to address you; we don't want to pass you
24 over. These are available on the table at the entrance to
25 the auditorium; they are also available from

1 Ms. Pendlebury here at the front desk. So please fill
2 these out. And so at this time, we will invite members of
3 the public. Again this is -- these are non-agendized
4 comments. And we please ask people to limit their
5 comments to three minutes.

6 So with that, the first card I have is Patrick
7 Tully.

8 MR. TULLY: Good morning, President Carter.

9 My name is Patrick Tully. I live on Garden
10 Highway here in Sacramento, actually, Sacramento County.
11 And I'm here today kind of representing Sacramento River
12 Property Owners Association and the Garden Highway --
13 newly formed Garden Highway Association, which just met
14 two days ago.

15 We're obviously here concerned about the Natomas
16 EIR that closed October 29th, and we proposed a lot of
17 comments to that. This is under the SAFCA Board. And I
18 realize that -- you know, I am addressing you because,
19 obviously, you have the input to it. You have the
20 District 1000 oversight.

21 First item I would like to address is that we made
22 our comments. We were told that our comments were going
23 to come back in the form to have a final EIR on
24 November 27th and then is voted to be final on the 29th,
25 two days later. A 500-page document; we have no idea

1 whether our comments are going to be in there or not. I
2 repeatedly asked SAFCA to simply postpone or table the
3 vote on the final EIR or so everybody could have the
4 opportunity to look at it and properly comment on it.

5 Second item I would like to comment on is just the
6 overall big picture of it. Obviously, there's a lot of
7 interested people here. We had huge turnouts for our
8 meetings; we've never had this kind of turnout in the
9 past.

10 Big picture here is that we're basically being
11 told that we will not flood based on the changes because
12 the Yolo County side of the levee is, in fact, up to
13 5 feet lower. We also already know that Yolo County is in
14 the process of looking at raising their levees and
15 actually using the same engineers firm as Sacramento is.

16 If you look at the SAFCA proposed EIR, you won't
17 see any mention of any protection for the residents along
18 Garden Highway, on either side, including to the land
19 people. There's no mention of impacts to wells, no
20 mention of impacts on what that would do to flooding. My
21 house in particular would potentially flood 2 feet deeper
22 than it ever has. It's never flooded, by the way. I'm
23 raised at the level which we were told to be at.

24 So we do have some serious concerns. And I would
25 encourage the Board to look a little bit deeper as to the

1 impacts on us. We do pay the SAFCA tax. We're all taxed
2 on Garden Highway for this equal protection and we simply
3 don't believe we're going to get it.

4 And I think the most prudent move right now for
5 all people, is that SAFCA tables this vote on the 29th,
6 give everybody a little cooling off period to review this
7 document, and properly assess what's going on.

8 Thank you.

9 PRESIDENT CARTER: Thank you.

10 Any questions for Mr. Tully?

11 VICE PRESIDENT HODGKINS: Who is the Sacramento
12 River Property Owners Association?

13 MR. TULLY: The Sacramento River Property Owner
14 Association has been around for quite some time. I can't
15 even tell you when it was started. And that organization
16 is mostly Garden Highway owners on the riverside.

17 Now, there's a new organization which is everybody
18 along both sides, land and the riverside. And that is --
19 we met the first time just the other night. And I think
20 there was 200-plus people involved.

21 And one of my big concerns is that the executive
22 director of SAFCA was interviewed by Channel 3 and simply
23 said that our flyer was completely full of lies. And I
24 think that there's a lot of misinformation going around,
25 right now, by both sides. And I think a little bit of

1 time for everybody to sort this out would be a big
2 benefit.

3 PRESIDENT CARTER: Okay. Could I ask staff in
4 terms of what has been our involvement in the EIR and the
5 public information process in this regard?

6 GENERAL MANAGER PUNIA: We are reviewing at this
7 time SAFCA's information, and our tentative plan is to
8 bring that project to the Board for the December meeting.

9 Steve may have a little updated information. He
10 met recently with the SAFCA staff.

11 CHIEF ENGINEER BRADLEY: Yeah. Chris Hewitt, our
12 environmental scientist, has been looking at and did make
13 some comments on the EIR. And I have not been up-to-date
14 on the EIR. I've been dealing with quite a few other
15 things at this time. We do have quite a few projects that
16 are coming forward in the next month, SAFCA being a large
17 part of those.

18 PRESIDENT CARTER: And Mr. Hewitt has been -- has
19 seen the public comments from the other interested parties
20 that commented on the EIR?

21 CHIEF ENGINEER BRADLEY: I doubt that. Those go
22 to SAFCA, they address them in the final EIR, and then
23 they can approve it. That's the process as I understand
24 it.

25 PRESIDENT CARTER: Okay.

1 SECRETARY DOHERTY: Mr. Tully, who said that Yolo
2 County is raising their levees?

3 MR. TULLY: We had a member who actually attended
4 a -- well, West Sacramento in Yolo County-West Sacramento
5 meeting where they had the levees that essentially protect
6 West Sacramento, that they are going to be raising those.
7 That's not to say that it was all levees in Yolo County.

8 But the overall thing is that the freeboard is
9 being raised on the Sacramento side, proposed by
10 Sacramento, up to three feet taller, which essentially
11 puts all of our houses lower, effectively. And if you are
12 not familiar with the scope, we're talking about 200-plus
13 homes, somewhere in that range.

14 So that 3 feet, we're being told by SAFCA that's
15 purely for federal rules to meet certification of the
16 levee. But of course if possible, there could be more
17 water coming through because now it's safer to do so. And
18 if Yolo County raises their side also, which we believe in
19 the long run, at some point, somebody will talk about
20 this, we would in fact all be flooded.

21 SECRETARY DOHERTY: Okay.

22 MEMBER RIE: Is the Board going to approve the EIR
23 in December?

24 GENERAL MANAGER PUNIA: That's the tentative plan
25 at this time, that we will bring SAFCA's application to

1 the Board for its consideration.

2 MEMBER RIE: Are we certifying their EIR? Are we
3 the lead agency for the EIR?

4 GENERAL MANAGER PUNIA: Steve will be able to
5 better answer this.

6 CHIEF ENGINEER BRADLEY: We are not the lead
7 agency. SAFCA is the lead agency. We are a responsible
8 agency. We made a decision, you will have to make some
9 findings that the EIR meets the purposes of the Board.

10 MEMBER RIE: Thank you.

11 PRESIDENT CARTER: Very good. Thank you very
12 much, Mr. Tully.

13 Ms. Langenkamp?

14 MS. LANGENKAMP: Good morning. I'm Carolyn
15 Langenkamp. Good morning, Butch.

16 I'm a citizen. I live in South Sutter County
17 between Riego Road and Sankhe Road. And I'm here to speak
18 on the same topic that Mr. Tully just spoke to you about.

19 There are -- we're here because we understand --
20 and apparently the application for the permit from SAFCA
21 will be coming to your Board in December on the Natomas
22 Levee Improvement Program.

23 There are significant neighborhood concerns about
24 the Environmental Impact Report that we have seen and
25 significant concerns about the short time period during

1 which we had notice and an opportunity to comment and
2 oppose sections of the Environmental Impact Report.

3 I personally have been impacted because I was
4 working out of the country during this notice period and
5 only recently found out about the project and about the
6 impact personally on my house. And I have not had an
7 opportunity to lodge my comments and my objections to
8 sections of the Environmental Impact Report.

9 Your Board has two documents from my neighbor, Roy
10 Dahlberg, and I wanted to highlight those for you.
11 Mr. Dahlberg sent a letter to your Board on October the
12 23rd, 2007, and he sent a follow-up e-mail of
13 November 4th, 2007, to Mr. Punia and to -- with copies to
14 Mr. Bradley and Ms. Finch and Scott Morgan. And in
15 those -- in that correspondence, Mr. Dahlberg gives
16 details about some of our concerns about the project and
17 our concerns that there will be potentially severe impacts
18 on us both during the construction and potentially from
19 the hydrology of the project which Mr. Tully was talking
20 to you about.

21 We believe that and we're hopeful that an extended
22 period for the comments and also an extended period for
23 discussions with the SAFCA staff, we can hammer out and
24 discuss and negotiate adequate mitigation so that our
25 concerns can be met. That's what we're asking for.

1 Mr. Tully explained to you -- I will highlight it
2 for you too. If you have driven out along the Garden
3 Highway in Sacramento. I live in south Sutter County --
4 did I say that already? -- between Riego and Sankhe Road.
5 And I have lived there since 1981. My house flood in 1986
6 and I fixed it, and then it flooded again in 1997. It was
7 an old 1950s ranch-style house and it was sitting on a pad
8 of dirt. So after the '97 flood, I tore the house down
9 and built up on pilings and called SAFCA staff at the
10 time -- this was back, this was ten years ago -- to say,
11 "I'm doing my mitigation. I'm rebuilding my house. How
12 high do I have to put this house so I'm not going to flood
13 again?"

14 And at the time, no one knew, so I couldn't get a
15 specific answer. But I built my house so that the
16 finished floor is -- I'm up on pilings. And I'm two and a
17 half feet above the current levee. So I'm thinking, woo,
18 I'm never going to flood again, and now I'm being told
19 that the levee is going to be 3 feet above the existing
20 road, which means I've got -- I've got 6 inches. And if
21 any of you have ever flooded, one half on an inch is
22 enough to ruin a lot of your house.

23 So what we're talking about are about 250 homes
24 along the Garden Highway where people have done mitigation
25 efforts, where they have invested in the property, where

1 they have made decisions about how to build their houses
2 based on this realistic assessment that if our houses were
3 above the levee, we weren't going to flood, and that's
4 what we're facing now. And there are many, many
5 homeowners that are very concerned about this.

6 The hydrology of this situation is important to us
7 because we're being told different things.

8 One minute? I will finish. One minute or one
9 second? One minute? I am a lawyer, so sorry about that.

10 PRESIDENT CARTER: Please wrap it up.

11 MS. LANGENKAMP: So we're being told, "Don't
12 worry, you're not going to flood. Yolo County will flood
13 before you or the levees upstream will break before the
14 water gets up this high."

15 But we need to know, if that's true, then the
16 mitigation needs to be discussed about that impact. And
17 if Shasta starts releasing -- the Shasta Dam starts
18 releasing more water, we have a serious potential problem
19 about flooding.

20 And then there are other impacts from it --
21 vibration, noise, problems with our wells. And so we want
22 to highlight that for you so you can help us in this
23 process to get the mitigation in place.

24 Thank you very much.

25 PRESIDENT CARTER: Thank you.

1 Any questions for Ms. Langenkamp?

2 Thank you very much.

3 MEMBER RIE: I have a question for staff.

4 Can the Board members get copies of these letters
5 and copies that were submitted by the public?

6 GENERAL MANAGER PUNIA: We'll provide you a copy.

7 PRESIDENT CARTER: Thank you very much.

8 MS. LANGENKAMP: And would it be appropriate for
9 us to talk to Chris Hewitt at this point in time or talk
10 to anybody on your staff?

11 PRESIDENT CARTER: Offline, yes, absolutely.

12 MS. LANGENKAMP: Great. Thank you very much.

13 PRESIDENT CARTER: Mr. Shapiro?

14 MR. SHAPIRO: Good morning, members of the
15 Reclamation Board.

16 I'm Scott Shapiro appearing today on behalf of
17 Reclamation District 2126. This is the Atlas Tract
18 discussion that we had last month.

19 (Thereupon an overhead presentation was
20 presented as follows.)

21 MR. SHAPIRO: I appreciated the discussion during
22 agenda setting, and I will be exceedingly brief in light
23 of the fact that the Board apparently does desire to bring
24 this back at a future time. My goal is to put some
25 information in the record since the record last time, I

1 don't think, accurately reflected the project.

2 Secondly, to add some additional information
3 beyond the Board packet that we had sent to the Board
4 about two weeks ago, we pulled together some more
5 information that we think is relevant.

6 And finally to request that when this comes back,
7 that it comes before our encroachment permit.

8 I think last month's discussion where we tried to
9 talk about the 408 letter, we ended up with a significant
10 detour, talking about previous activities. And from my
11 review of the transcript, it seems like that detour was
12 roughly half the time. It would be our desire to -- or
13 2126's desire to separate the two, to have an open
14 discussion, investigation, whatever it takes, to resolve
15 the issue regarding work done in 2006, and to come back as
16 appropriate and deal with the encroachment permit.

17 So with that, let me briefly go through this.

18 --o0o--

19 MR. SHAPIRO: There are PowerPoints being handed
20 out to you as well. This first slide just provides the
21 context that, I think, reflects what we've already talked
22 about during the agenda approval item.

23 We did go back and check the record. We have sent
24 correspondence to the Reclamation Board members and the
25 staff that show the key letters between 2126 and the

1 Reclamation Board. In particular, the letter's saying
2 that we were going to apply for an application. We
3 actually applied for that permit. We communicated
4 throughout the process. Finally, we concluded that there
5 was no need for an encroachment permit and we wrote the
6 Reclamation Board indicating that and indicating why we
7 felt there was no need. We did not receive a response
8 from the Reclamation Board indicating anyone had any
9 concerns.

10 We also had submitted a draft negative declaration
11 to the Board and the Board, or staff, responded saying
12 that anyone felt that Board did have jurisdiction. So we
13 certainly felt we overly communicated the issue; we didn't
14 hide anything. This was all back in 2006 when we did the
15 work.

16 We produced a few illustrations. Two of them, in
17 different forms, were in the Board packet, and we're
18 reproviding them to you here with some additional
19 information on them. So there's a third one.

20 --o0o--

21 MR. SHAPIRO: Jumping right to them, I will show
22 you, on this aerial, on this aerial, there are the two
23 boxes that shows the close-ups. So if you zoom ahead to
24 the extent of work and plan view, the project levee, where
25 it says "project levee," nonproject levee is the blue.

1 The transition area, which is the pink vertical stripe, is
2 the closest we've got to the project levee. You can see
3 the "no work done here." We stated roughly a hundred feet
4 off of what we believe to be the toe. Of course, the
5 levees connect, so it's hard to tell where the toe is, but
6 we believe the toe is there. And as you will see in the
7 profile, we believe that's confirmed.

8 --o0o--

9 MR. SHAPIRO: Here's the same thing on the north
10 side. Again, this time it's not 103 feet. It's
11 98.5 feet.

12 --o0o--

13 MR. SHAPIRO: Let me move right to the profile,
14 which is the newest information. It was not included in
15 the Board packet. I will just explain this one, and then I
16 will conclude.

17 This profile runs from the west to the east. The
18 solid line along the top is the finished grade of the
19 nonproject levee. The dotted line, which you see below
20 it, was the old grade of the nonproject levee. You can
21 see the old grade moves along and then slowly comes up,
22 and then is the same as the final grade of the nonproject
23 levee for a hundred feet.

24 So what you are seeing is, for 100 feet from the
25 project levee, we didn't touch or adjust the grade at all.

1 Our work all occurred 100 feet into the nonproject levee.

2 That was the confusion last time. We kept saying,
3 "Yes, there's a tie-in," but the tie-in was to the
4 nonproject levee, not to the project levee.

5 We have made copies available for your staff as
6 well. And if they want to use engineering documents, we
7 they can provide it.

8 The transcript had some strong statements. We
9 just think it's important to get this in the record to
10 show that there is factual support for our position.

11 The final point on this last slide is, we do want
12 to come back. If the Board wants to investigate, we
13 support that. If you want to send a staff down, we
14 support that. We're happy to share all and any
15 information.

16 Our single request is that this be addressed
17 separate from our encroachment permit so it does not
18 become a distraction again.

19 Thank you.

20 PRESIDENT CARTER: Thank you.

21 As stated earlier, we appreciate bringing this to
22 our attention. You will have an opportunity to go through
23 this in more detail when we do discuss this as a Board, as
24 part of the investigation, prior to the permit action on
25 the separate action.

1 So this information you have here is a little bit
2 beyond the public comment scope, but we will have an
3 opportunity to present that to the Board and discuss it in
4 a public meeting at a future meeting, Board meeting.

5 So appreciate bringing that to us.

6 And are there any questions for Mr. Shapiro at
7 this point?

8 VICE PRESIDENT HODGKINS: No questions. But
9 further public comment, if a Board member can do that --
10 since I was sort of the leader in the attack that occurred
11 at the last Board meeting on San Joaquin, they asked me to
12 come down and meet with them, and I did.

13 And in the process of doing that, I did go by and
14 look at this connection and the information that Mr.
15 Shapiro has presented is correct. So from a technical
16 standpoint, they didn't do any work within 90 feet of the
17 crest of the levee.

18 I don't want to try and debate here whether they
19 still needed a permit or not. Okay? But I think the
20 thing that's at least most of what they have told us --
21 and not that everything is truthful.

22 The other point that came up was that San Joaquin
23 was -- the San Joaquin staff particularly, this is county,
24 and I think there were three cities represented. Very
25 concerned about the perception that the Board has that

1 they are development-driven. And in effect, in talking to
2 me, talked about a lot of things they are doing, that may
3 tend to show that, in fact, they're becoming much more
4 serious about addressing that, and they want to work with
5 the Board.

6 And one of the things that I think would be
7 helpful in doing that, and I think they are agreeable to
8 this, is the formation of a subcommittee, like we did up
9 in Three Rivers, where there's an opportunity for Board
10 members to go to public meetings down there and just
11 discuss candidly where things are going.

12 I am being cut off.

13 I want to put that item on the agenda for the next
14 meeting. And we'll discuss that in a future agenda.

15 PRESIDENT CARTER: So that will be part of the
16 discussion in terms of future agenda. And the
17 subcommittee that you're considering is a formal
18 subcommittee with more than two members?

19 VICE PRESIDENT HODGKINS: Yes.

20 PRESIDENT CARTER: Okay. Thank you.

21 Thank you, Mr. Shapiro.

22 MR. SHAPIRO: Thank you.

23 PRESIDENT CARTER: Mr. Ellis?

24 MR. ELLIS: Good morning, President Carter and
25 members of the Board.

1 I am Tom Ellis, president of the Sacramento River
2 West Side Levee District. And I'm here this morning on
3 behalf, of course, of that district but also those of us
4 who live and work in the Colusa Basin. And I'm here to
5 thank you for completing the rework on the Tisdale Bypass,
6 that cleanout project. It looks beautiful. We certainly
7 feel a whole lot safer. So you have accomplished your
8 mission, that of public safety with flood protection.

9 And we thank you for that.

10 PRESIDENT CARTER: Any questions for Mr. Ellis?

11 We, the Board, also thank you and all of the
12 locals for their continued support and persistence in
13 getting that project done.

14 Those are all the cards I have.

15 Is there any member of the public out there that
16 does wish to address the Board on unagendized items?

17 All right. We'll move on then to Item No. 6,
18 Report of the Activities of the Department of Water
19 Resources.

20 Mr. Inamine?

21 Welcome, good morning.

22 MR. INAMINE: Good morning. Keith couldn't be
23 here today. He had a personal matter to attend to.
24 Unfortunately I have a conflict as well, so I am going to
25 make the presentation here, summarize and update the Board

1 on the report that you already have. George Qualley is
2 here for the duration of the meeting to address any issues
3 throughout the rest of the meeting.

4 Again, I am Mike Inamine. I'm with the Division
5 of Flood Management, and I manage the Levee Repairs and
6 Floodplain Management Office.

7 The water conditions report that is in part of
8 your packet, Elissa Lynn will be making the presentation
9 at the next Board meeting as part of the flood
10 preparedness section of that agenda.

11 The other item as outlined in the report, Tisdale
12 Bypass, as you heard, has been completed. 1.8 million
13 yards of sediment has been removed from that project.

14 I would like to update you a little bit on the
15 Levee Evaluations Program. As you know, there are two
16 programs going on right now -- actually, one is about
17 ready to start -- the Urban Levee Evaluation Program is a
18 geotechnical evaluation for levees that protect urban
19 areas and population centers of 10,000 people or more; and
20 the Nonurban or Rural Levee Evaluation Program, which has
21 not yet started.

22 We're doing exploration in Marysville, Sutter
23 Basin, SJAFCA, RD17, and Natomas, currently. Basically,
24 10 out of the 12 urban areas have been identified. We are
25 just now starting some basic data collection in Woodland

1 and Davis.

2 You will probably be hearing about some work
3 that's taking place in major urban areas. This is an
4 update to the report. And that work will be starting in
5 about mid December. This is some profiling of channels
6 and rivers in those major urban areas that we expect will
7 take place throughout this winter.

8 The nonurban, or rural, levee information program,
9 we've just completed some interviews for consultants to
10 perform that work. We're in the process of negotiating
11 with contractors. We don't expect to execute that
12 contract probably about January of 2008. You will be
13 hearing about that. We will be doing a lot of data
14 collection throughout the rural areas, probably won't get
15 to our Corps expiration until the following year.

16 Next item in the report is flood fight
17 inspections. Probably the major updates of that report is
18 that the -- our Operations Branch has been going out and
19 conducting pre-flood season workshops and essentially
20 outlining what the vegetation policy is going to be for
21 further inspections. That formal letter will be going out
22 in about two or three weeks to all the districts.

23 Critical Repairs Program. We have now completed,
24 out of the 2005 critical erosion repairs, of those 33
25 sites, all 33 have been completed. 22 were done by DWR;

1 11 by the Corps. There are some minor planting that needs
2 to be completed by November 30th on behalf of the Corps
3 sites.

4 The 71 sites that were identified in 2006, 8 of
5 those were performed by DWR; 14 by Corps of Engineers. In
6 addition, there are two Cache Creek sites, which have been
7 delayed. We are currently in negotiations with the land
8 owners before we can build those setback levees. But the
9 remaining 22 sites are targeted to be completed by
10 November 30th.

11 There were also 47 sites that were identified in
12 2006 for -- as part of the PL 84 -- under PL 84-99
13 criteria. DWR just completed the last site for that
14 batch. That was viewed 0.8, I believe. The Corps has
15 also added or ordered two sites -- as you may recall, we
16 ordered two sites, sites that are critical repairs, need
17 repairs before the next high water event. They protect
18 rural areas that have a benefit-cost ratio of greater than
19 1. Six sites were added by the Corps of Engineers. I
20 believe all of those were in RD 150. They will be
21 completed in 2008.

22 Also, the Corps has committed to doing work on 133
23 sites. These are order of three, four, and five sites,
24 sites that are lower priority. Originally, the plan was
25 to do 62 sites before this flood season for a variety of

1 reasons. That's been scaled back to about seven sites
2 that are going to be performed through this flood season.
3 The rest of the 124 remaining sites will be flood fought
4 through the season and the Corps will be working on that
5 through next year.

6 Let's see. I don't think there's much to be noted
7 on the Fremont Weir except it has been replaced a little
8 bit upstream.

9 There's been recent developments on a nonproject
10 levee, Hamilton City. As the Board may recall, about a
11 year ago, we established a grant program or nonproject
12 levee grant program, but some of them were some sites that
13 were identified as critical repairs sites. Three of those
14 were nonproject sites; one of them was Hamilton City. It
15 was a cost share program. Hamilton City could not come up
16 with their cost share.

17 We went back to Hamilton City this summer and
18 proposed a much cheaper alternative. And so we've been
19 working with the County to try to do something to address
20 that existing levee. So we're working through some
21 negotiations right now, and we're waiting to hear back
22 from Hamilton City to come up with some evaluations of
23 their project so that we can assist in helping that happen
24 this winter.

25 3B's is the Department -- this is another cost

1 share program, another grant program, 50/50 cost share at
2 present. The Department's role in this is to assist the
3 County in preparing the scope for the feasibility grant.
4 And so because, again, this is another nonproject levee,
5 we can assist on a cost share basis, and the way that that
6 is being handled by the Department is, we're assisting
7 them in preparing the scoping document for the
8 feasibility study.

9 Let's see. Sutter Bypass. There's a note from
10 the last meeting that some trees were being planted. My
11 understanding is, as of yesterday, those trees have all
12 been removed to date. I understand that those have been
13 cleared out by the owner.

14 And that concludes the updates to the Department's
15 report.

16 PRESIDENT CARTER: Thank you.

17 Are there any questions for Mr. Inamine?

18 Mr. Inamine, I do have a couple of questions.
19 One, in conjunction with the interagency collaborative
20 forum and the levee roundtable, there were -- DWR was
21 working on interim guidance in terms of vegetation
22 management for the reclamation districts and the local
23 maintaining agencies. Have those been communicated to the
24 agencies, the maintainers?

25 MR. INAMINE: Yes, they were done in a series of

1 workshops that they conducted over the last month. The
2 formal letter though that you speak to will be out in
3 about two or three weeks. And it's the same information
4 that's presented at the workshop, basically -- the pruning
5 up to 5 feet and the 20-foot swell on the water side and
6 pruning up on the land side of the levee. So that
7 communication has been made. Formal communication will be
8 out, two or three weeks.

9 PRESIDENT CARTER: Okay. Has the Rec Board staff
10 commented on that? Do we have copies of that? Probably
11 the Board members ought to obtain copies.

12 Do -- Mr. Punia, what's the status on that?

13 GENERAL MANAGER PUNIA: I think the Board directed
14 that we should send some kind of written communication to
15 the local levee maintaining agency. So we discussed it
16 with DWR and the Corps.

17 We haven't received a written notification from
18 the Corps. And so far, as the various Board members are
19 aware, that we have this levee roundtable as a result of
20 which the Corps indicated that they had revised their
21 implementation of the vegetation policy, but we are
22 waiting to hear a formal memorandum from the U.S. Army
23 Corps of Engineers. The Department of Water Resources'
24 thinking is, once we got the formal memorandum from the
25 U.S. Army Corps of Engineers, at that time, we can only

1 convey to the local reclamation districts. At this time
2 they are just conveying the information from the
3 communique that that was developed.

4 But still, we are waiting for the DWR and the
5 board staff from the U.S. Army Corps of Engineers formal
6 notification of that policy. And the Corps assured us
7 that they will send us a formal notification pretty soon.

8 PRESIDENT CARTER: My understanding of the policy
9 is that the Corps has not formally changed their policy
10 with regard to levee vegetation management. And I thought
11 that was relatively clear. What they have done is agreed
12 to review that policy and in the -- during the time that
13 they are reviewing that, they are not disqualifying any
14 levee maintaining agency for PL 84-99 assistance, flood
15 assistance.

16 And in parallel with that, the levee roundtable
17 and DWR is working on an interim guidance for the
18 reclamation district maintaining agencies such that they
19 know what to do. Because at this point they don't. And
20 so that's -- we need to communicate two things to the
21 local maintaining agencies: One, that they will not be
22 disqualified for not being compliant with the Corps
23 standard on the vegetation piece of their inspection; and
24 two, that there are guidelines on what they can and should
25 be doing out there as far as levee vegetation management.

1 So my question is, have we done that? Are we
2 doing that? And are the rec districts, are they -- have
3 they commented on that? Are they okay with that?

4 GENERAL MANAGER PUNIA: In response to your number
5 one item, as you may recall, the communique developed as a
6 result of the roundtable. That was conveyed to the
7 Central Valley Flood Control Association and to the local
8 communities' local levee maintaining agencies.

9 But there's no formal communication between the
10 Board and the local levee maintaining agencies or the DWR
11 and the local levee maintaining agencies because they are
12 waiting for a response from the U.S. Army Corps of
13 Engineers. And I think it's premature for us to convey
14 this to the local levee maintaining agency without
15 receiving any written notification from the U.S. Army
16 Corps of Engineers.

17 PRESIDENT CARTER: Okay. I'm unclear what written
18 notification they need because the communique was from the
19 Corps as well as all the other agencies. And I thought
20 the communique was clear.

21 GENERAL MANAGER PUNIA: Didn't the Corps speak at
22 the October Board meeting? No, I'm sorry, the September.

23 PRESIDENT CARTER: September Board meeting, saying
24 they are in support of the communique.

25 MEMBER RIE: I thought that they publicly

1 announced that the reclamation districts would not have to
2 remove the vegetation come March 2008.

3 PRESIDENT CARTER: I think if we wait for
4 something from the Corps on a policy, we're going to be
5 waiting a long time. And I think they have agreed and
6 have publicly endorsed the communique. So that intent, if
7 it hasn't already been communicated to the reclamation
8 districts, and the maintaining agency, it needs to be.
9 And then this, the interim guidance from DWR in terms of
10 vegetation management needs to be --

11 MR. INAMINE: Yes, that's the letter that's going
12 out in two or three weeks, with that interim guidance so
13 folks know what to do. And the Corps, or the Department,
14 is working within the roundtable to look at, really, which
15 is the only out that I'm aware of. I am not the expert on
16 this, but really the only out, which is just the only
17 bearing to that policy, is the communique.

18 PRESIDENT CARTER: Okay.

19 MEMBER BURROUGHS: Would it be possible to get a
20 copy of the schedule of workshops and if, in fact, there
21 was attendance by all districts?

22 MR. INAMINE: Sure.

23 MEMBER BURROUGHS: And then a copy of whatever
24 information was handed out, that would be great.

25 MR. INAMINE: Sure.

1 PRESIDENT CARTER: Very good.

2 Any other questions of Mr. Inamine? Requests?

3 Very good. Thank you very much.

4 MR. INAMINE: Thank you.

5 PRESIDENT CARTER: We're running about five
6 minutes ahead of schedule, according to my watch. So
7 rather than try and launch into another agenda item unless
8 there's something, quickly, that, Mr. Punia, that you
9 think we can address in the next five or ten minutes, we
10 can take a five-minute stretch. Or do you have something
11 that we can --

12 GENERAL MANAGER PUNIA: We can brief you on one
13 item of the General Manager's Report if the Board chooses
14 to.

15 PRESIDENT CARTER: Okay. Let's go ahead and start
16 that, and then we'll continue it.

17 GENERAL MANAGER PUNIA: We have received a letter
18 from the Bethel Island Municipal Improvement District
19 informing the Board that they are not under our
20 jurisdiction because they are no longer a reclamation
21 district.

22 Dan Fua is working with them, and Dan would like
23 to brief the Board on this subject, what our next steps
24 are.

25 SUPERVISING ENGINEER FUA: Well, to reiterate

1 Jay's statement, the letter that we received from the
2 Bethel Island Municipal Improvement District told us that
3 they are not subject under the Reclamation Board's
4 oversight because they are not a reclamation district;
5 they are a municipal improvement district. And I don't
6 know if you received a letter. I have extra copies, hard
7 copies, if you do not. We e-mailed it to you last Tuesday
8 or Wednesday.

9 But essentially, the next step for us is have our
10 legal counsel review the letter and write or make a formal
11 assessment of the argument, whether the counsel agree or
12 not on their assessment that they are not subject to the
13 Board's oversight.

14 And then we'll bring back that legal opinion to
15 you, next month, for your approval or something. So
16 that's the staff's plan on the next step.

17 PRESIDENT CARTER: Are there any questions for
18 staff on this?

19 Very good.

20 I forgot to mention, Mr. Punia, could you -- and I
21 think Mr. Inamine has already left. But traditionally,
22 the Board in November hears a report from DWR regarding
23 the status of flood preparedness in our November meeting.
24 We didn't have that this meeting; we need to be sure that
25 they are put on notice that we need to have that in

1 December.

2 GENERAL MANAGER PUNIA: Yes. Jay Punia.

3 We discussed it with the Department of Water
4 Resources. They were told -- they suggested that we will
5 brief the Board in December, so tentatively, they are
6 scheduled for the December meeting.

7 PRESIDENT CARTER: Hopefully we don't have any
8 major floods between now and December.

9 Okay. Very good.

10 At this time, we'll table the balance of the
11 General Manager's Report, Item 12, and we'll move on with
12 Item 7, Three Rivers Levee Improvement Authority Monthly
13 Report.

14 Mr. Brunner, good morning. Welcome.

15 MR. BRUNNER: Good morning. I am Paul Brunner,
16 the executive director for Three Rivers, and I will be
17 doing my usual monthly report.

18 I will be referencing the report that we submitted
19 ten days ago, so if you pull that out. We did highlight,
20 as usual, the updates to the report in the italics and
21 underlines.

22 My intent here isn't to go through every change
23 that we have, but to just highlight a few items for you.
24 And then at the end, if there's questions, feel free to
25 ask questions to us.

1 What I would like to do is actually turn to page 2
2 of our report and mention on Segments 1 and 3, on page 2,
3 on the Feather River, for reviewing the work, it ties in
4 with the discussion of flood control and are we ready for
5 the winter season in here.

6 The work that we did on Segment 3, we did
7 complete. We did build the stability berm. It's
8 weather-proofed, and we're off the levees, so we're good
9 to go there.

10 And we have asked RD 784, that works with us on
11 maintenance of the area, to be vigilant and make sure that
12 we have the extra measures of watching on that levee
13 during the flood season of this year.

14 On the same page, on Segment 2, I would like to
15 highlight the point where we are working through with the
16 design of the Corps of Engineers and DWR. I have
17 personally made calls into the Corps and talked to the
18 state about the Rice property. That was an issue that
19 came up at the last meeting about making sure we try to
20 resolve that as quickly as possible.

21 We do have a meeting, and one of the first of two
22 meetings. There's one next Monday with both the Corps and
23 the state to work through those designs, their comments
24 that they had on alignment and those different kinds of
25 issues that were brought up.

1 My goal is to really hopefully resolve the issue
2 with the Rice property, on Monday, with the Corps and DWR.
3 Hopefully that happens. If not, the second meeting is on
4 December 18th, where we have with the Corps and we'll
5 continue to work with DWR on the comments.

6 The -- also on Segment 2, you will see that we did
7 make a small portion of the award for Segment 2 Teichert.
8 That's not the entire contract, but a small portion. But
9 they were identified as the low bid. And if we are
10 successful, we will go forward with the rest of the
11 project, which is our intent to be. We would be making
12 the award to Teichert for future work, done next year.

13 We continue to work on Phase 3 on Segment 2, again
14 with the general manager, on the encroachment permit, the
15 408 permit. And our hope is to be back here next month to
16 give you a better update and have a discussion on the
17 encroachment permit.

18 On page four of our --

19 MEMBER RIE: I have question. Did the 408 letter
20 go out to the Corps?

21 MR. BRUNNER: The 408 letter has not yet gone out.
22 We have provided information to Jay and I'm also still
23 working with the Corps on each one of those items. I
24 would hope that it would go out soon.

25 And Jay, you could probably address it better.

1 GENERAL MANAGER PUNIA: Yeah. We are getting the
2 pieces of the information we need to attach to the 408
3 letter and their comments, their hydraulic analysis. So
4 we are compiling this information and hope to send it to
5 the Corps soon.

6 MEMBER RIE: Thank you.

7 SECRETARY DOHERTY: Mr. Brunner, I have a question
8 for you also. On page 3, No. 2, section b, Qwest has
9 supplied information on this utility crossing -- is below
10 the 100 year and '57 design water surface elevation.

11 Does it need to be raised?

12 MR. BRUNNER: The issue at Qwest, we need to
13 continue the discussion with the Rec Board staff on that.
14 There's several items on this as to -- as we've gone
15 through the utility crossings that we've identified.
16 There was one meeting with staff a month or two ago, along
17 with the Corps on what to do with this. So this is a work
18 in progress. There will be some things, potentially, that
19 will be coming back to the Board via the staff, Rec Board
20 staff, such as identifying all utility crossings and
21 putting markers in future encroachment permits, and some
22 way of making sure that we really keep track on these
23 items, in a more thorough manner.

24 SECRETARY DOHERTY: Okay. Thanks.

25 MR. BRUNNER: On the last page of the report, two

1 items I would like to address here. I say in the report
2 that I will give you an update on our EIP funding, Early
3 Implementation Project, funding.

4 On this particular case, we did turn in our
5 financial plan to the state, back in October, beginning of
6 October. We are working with the state for that plan. I
7 hear no issues with the plan. We haven't got any of the
8 approvals back yet on the plan or the draft agreement yet
9 of the plan. I don't think any of the applicants have.
10 We're working with the funding.

11 In our particular case, talking with DWR
12 management, for us, we have made some specific requests
13 about direct payment on costs, such as for real estate
14 properties on that. We have a large cost on real estate,
15 and that really is a big burden for us to carry that cost,
16 and we would ask directly that the state be able to make
17 those direct payments.

18 DWR management heard that and understands that and
19 is working with DGS contractor to try to make those
20 agreements work. And I understand that they are still
21 working through that, with them, and hopefully last
22 communication that we had was that we get back the draft
23 agreement to look at hopefully by next Tuesday, which
24 would be the 20th of November.

25 It continues to move along. As soon as that

1 happens, we'll consummate the deals as quickly as possible
2 so then we can start the interactions, get the money
3 flowing, and then go on and start construction next year.

4 The last item that I have to report on is on the
5 building permits. We were not successful in getting all
6 the various building permit information for this
7 particular month. The employee was not there, that we
8 usually communicate with. So we'll get that in an update.

9 I can tell you that it's not a lot of building
10 permits. The last report, during this time period, it was
11 zero. There hasn't been a lot of activity. So it's not
12 really a big deal.

13 With that, that's the end of my update.

14 Is there any other particular questions that I can
15 answer for you?

16 PRESIDENT CARTER: Any questions for Mr. Brunner?

17 No?

18 MR. BRUNNER: Thank you.

19 PRESIDENT CARTER: Thank you very much. Very
20 good.

21 Shall we continue with the General Manager's
22 Report?

23 GENERAL MANAGER PUNIA: Jay Punia, general
24 manager. General Manager's Report.

25 Budget change proposal, that's a top priority at

1 this time to prepare the budget change proposal so that we
2 have additional funding available to the Board, starting
3 January 1st. So we are working on the budget change
4 proposal.

5 Eric, are you ready to give a quick synopsis of
6 budget change proposal to the Board?

7 SENIOR ENGINEER BUTLER: It will take a minute to
8 load.

9 GENERAL MANAGER PUNIA: Okay. I will continue so
10 you can load your computer.

11 The next item is the status of our hiring process
12 to hire an additional staff for the Reclamation Board. We
13 have received good response to our advertisement. We got
14 almost a hundred applications, so we are going through the
15 screening process and scheduling the interview for next
16 week to hire another staff assistant.

17 And President Ben Carter and Vice President Butch
18 Hodgkins and myself are working with Department of Water
19 Resources for developing the Central Valley Flood
20 Protection Bulletin -- the structure so that we can
21 implement the new flood legislation so that we are ready
22 to implement those legislations starting January 1st.

23 And Levee District 1 relief wells investigation.
24 You may recall that the Levee District 1 reported to the
25 Board that the relief wells installed by the U.S. Army

1 Corps of Engineers were not functioning well. On behalf
2 of Levee District 1, we requested the U.S. Army Corps of
3 Engineers to investigate the situation and then report
4 back to the Board and to the Levee District 1.

5 I'm glad to report that the Corps has agreed to go
6 back and assess the situation, and we will see what comes
7 out of this investigation. If the investigation shows
8 that the wells are not working, that there is a design
9 deficiency, then the Corps has to go back and fix those
10 relief wells.

11 Phelan levee. As you may recall, the Board
12 expressed great interest in the erosion at the Phelan
13 levee at River Mile 192.4. DWR has concluded their report
14 and concluded that it's not meeting the critical criteria
15 under their criteria, so they have completed that report
16 and provided a copy to Mr. Les Heringer and recommended
17 that we should continue monitoring the report and that DWR
18 will also monitor the erosion at this site, and then they
19 may revisit. But at this time, the conclusion is, it's
20 not a critical site for them to undertake at this time.

21 As you may recall, the Union Pacific Railroad
22 Company started the work at their bridge over the Bear
23 River near Wheatland. And the Board stopped to work
24 because they haven't applied for a permit.

25 Since then, Steve Bradley and the Rec Board staff

1 worked with the U.S. Army Corps of Engineers. And I am
2 glad to report that we have resolved the issues and issued
3 them a permit for a portion of the bridge that they can
4 start the construction again.

5 And I want to commend the services of Steve
6 Bradley, that he was able to gather all the information
7 and the coordination needed with U.S. Army Corps of
8 Engineers to issue this permit in a timely fashion so that
9 they can continue with their work.

10 Atlas Tract, as we discussed previously, staff
11 discussed it at our staff meeting, that we need to
12 investigate and report back to the Board. Staff's
13 conclusion was that due to the workload, we will bring
14 this topic back to the Board after January -- after
15 December 31st. Because there are a lot of critical
16 projects that need the Board's permits, so due to the
17 priorities of those projects, we have postponed bringing
18 this Atlas Tract back to you, after December 31st.

19 MEMBER RIE: I have a question.

20 GENERAL MANAGER PUNIA: Yes?

21 MEMBER RIE: Considering that the work occurred in
22 2006, isn't there some statute of limitations on when the
23 Board can request an applicant to go back and obtain a
24 permit from this Board? Don't -- doesn't our ability to
25 ask for a permit expire after 30 days, 60 days, a year?

1 GENERAL MANAGER PUNIA: I'm not aware of any
2 statute of limitations. Maybe Nancy or Steve can answer
3 that question.

4 CHIEF ENGINEER BRADLEY: I believe this is more of
5 a legal question, so I guess I will practice my attorney
6 language here today.

7 Actually, there's nothing in the regs that says
8 that. And so I don't know what statutory law says, but
9 there's nothing in the regulations that says that.

10 MEMBER RIE: It just seems to me that you can't
11 wait too long. If the staff wants the applicant to get a
12 permit, I think we need to resolve this and let them know
13 that they need to get a permit after the fact. We need to
14 do it sooner than later. It just seems like you can't
15 just drag on, and then three years later come back and
16 say, "Oh, by the way, you need to get a permit for
17 something you did in 2006."

18 CHIEF ENGINEER BRADLEY: This is really not a
19 question of a permit at the moment. I think the Board
20 wanted a report on what went on and then some decision
21 would at that time be made as to what should be done.

22 It's not a question right now of a permit or not a
23 permit. If they needed a permit, it's too late for that.
24 It would be an enforcement action. And under that, the
25 Board could direct them to apply for a permit or several

1 other conditions.

2 MEMBER RIE: But isn't there some sort of a
3 statute of limitations on an enforcement action?

4 CHIEF ENGINEER BRADLEY: Not in the regulations.

5 MEMBER RIE: Just seems with other things that
6 occur out there, you have a time limit in which to
7 prosecute or enforce.

8 LEGAL COUNSEL FINCH: But this isn't that type of
9 situation with these enforcements. And if the Board makes
10 it a priority over issuing permits and would like the
11 staff to reprioritize the issues it's working on, then the
12 Board can make that known to staff and Jay can redirect
13 staff to address those prior to the permits. But that
14 would be the appropriate avenue at this point.

15 MEMBER RIE: So you are saying that there's no
16 time limit on enforcement actions?

17 LEGAL COUNSEL FINCH: Not necessarily, no. I
18 could look further into it, but putting it off a few
19 months to assist -- to reprioritize so the permits could
20 be addressed first is not an issue for the Board at this
21 time. But we could address this further, later.

22 MEMBER BROWN: Mr. Chairman, I believe there is a
23 statute that does address that appreciable time has passed
24 on an issue that brings up the necessity of the permit.
25 You might check in on that. I believe there's a statute

1 that does do that. I think it's a reasonable amount of
2 time.

3 LEGAL COUNSEL FINCH: And so if the Board would
4 like, we would direct staff to look into this and what is
5 a reasonable time and to put this issue before permits.
6 That's fine, but that is something that the Board would
7 have to direct staff to do.

8 GENERAL MANAGER PUNIA: I think that direction we
9 already got from the Board, that before we bring the Atlas
10 Tract permit, we need to provide you with staff's update
11 on this investigation, and we will do so.

12 But my request to the Board is that due to this
13 transition from the Reclamation Board to the Central
14 Valley Flood Protection Board and a lot of permits are on
15 the plate to bring to the Board in the December meeting, I
16 am requesting the Board, that they allow the staff to
17 postpone this item after December 31st.

18 PRESIDENT CARTER: I think what you are hearing
19 from the Board is that if there is an issue with a statute
20 of limitations for a reasonable amount of time, that would
21 preclude the Board from actually completing its
22 investigation and making a recommendation to the Board and
23 taking whatever action they choose to take with regard to
24 the applicant, if that, if timing, is an issue, then this
25 investigation needs to proceed ahead of not only the Atlas

1 Tract permit but the other permits as well.

2 So the first thing is that staff needs to find out
3 if timing is an issue. And if it is, then they need to
4 proceed with their investigation accordingly.

5 And the applicant has been put on notice that the
6 Board's concern about what went on there and is conducting
7 an investigation and intends to bring it back before the
8 Board at a future date, yet to be determined.

9 So at the next meeting, we need to hear from staff
10 their determination with regard to the timing.

11 GENERAL MANAGER PUNIA: Okay. Will do.

12 At this moment, I think I have a couple of more
13 minutes. I can quickly update on the budget change
14 proposal. Eric and I are working on the budget change
15 proposal, and Eric will project the slide and give you a
16 quick two-minute synopsis on the budget change proposal.

17 SENIOR ENGINEER BUTLER: Good morning. For the
18 record, this is Eric Butler, staff engineer for the
19 Reclamation Board.

20 And I just prepared a slide to briefly bulletize
21 the key components of this budget change proposal that we
22 are rapidly preparing to allow for the transition to the
23 Central Valley Flood Protection Board from the State
24 Reclamation Board.

25 (Thereupon an overhead presentation was

1 presented as follows.)

2 SENIOR ENGINEER BUTLER: The first item is funding
3 to pay the Board members. As you know, there's a salary
4 now going to be given to the Board members. And we have
5 to request that from the Department of Finance. So that's
6 one of the components.

7 We have also -- I believe we have concluded or
8 nearly concluded that we will need to have our own legal
9 counsel apart from legal counsel that has historically
10 been provided by the Department of Water Resources, and
11 also that it appears we need to have two counsel, one to
12 advise Board members, and one to advise Board staff. So
13 there's two positions for legal counsel.

14 We want to request another engineer, engineering
15 position, to be dedicated to coordinating with the
16 Department and other impacted agencies on the development
17 of a new state plan of flood control.

18 And then legislation AB 162 requires that the
19 Board coordinate with local agencies, primarily cities and
20 counties on certain updates to their general plans that
21 have safety and flood control ramifications. So we're
22 going to propose a section -- probably one senior and a
23 couple of engineers to do that work.

24 And then there's been a historical funding
25 shortfall for the existing staff. We're going to take

1 this opportunity to bring in some additional general fund
2 to correct that salary shortfall that's been occurring for
3 several years.

4 And then some additional operating expenses to
5 deal with start-up costs and then a baseline or continuing
6 augmentation to cover the typical operating expenses that
7 staff require in the state agency.

8 So in summary, it appears we're going to be
9 requesting six new positions and approximately
10 \$1.8 million of which two positions and slightly more than
11 a half million dollars will be requested as soon as
12 possible, after the new year, on the current -- within the
13 current fiscal year. And then the remainder of that
14 dollar amount will be made available to us hopefully by
15 July 1 of 2008.

16 So that quickly summarizes the key components of
17 that key proposal.

18 MEMBER SUAREZ: Mr. President, if I may?

19 PRESIDENT CARTER: Yes.

20 MEMBER SUAREZ: Is it possible before the end of
21 the day for us to get copies of that slide?

22 SENIOR ENGINEER BUTLER: I will do my best to do
23 find a place to print it out.

24 MEMBER SUAREZ: Very good.

25 VICE PRESIDENT HODGKINS: Could I ask a question?

1 PRESIDENT CARTER: Go ahead.

2 VICE PRESIDENT HODGKINS: Does anybody know, these
3 are costs that will be funded from bond funds?

4 GENERAL MANAGER PUNIA: These are requests through
5 the general fund?

6 VICE PRESIDENT HODGKINS: Okay. I -- you know,
7 this came up at a conference and I came home and read The
8 Bee. And there's a \$10 million shortfall. And the
9 warning at the conference from leg staff was the programs
10 that are going to be hardest hit are resource agency
11 programs.

12 So I think we need to be aware of that, and that
13 may mean that the Board has to put some effort in -- and
14 this will be a challenge for next year to make sure that
15 we can get this into the budget and approved by the
16 legislature. It's going to be a bad year.

17 LEGAL COUNSEL FINCH: May I clarify something
18 about the counsel positions? That is due, in part,
19 because of a recent court decision, the Morongo case. And
20 the Supreme Court has decided to hear the case.

21 So this is as the law stands now, but California
22 Supreme Court may decide that a separation of duties of
23 attorneys, that law will not stand. So there will be one
24 less staff counsel needed, depending on the Supreme Court
25 decision.

1 GENERAL MANAGER PUNIA: And I just want to
2 conclude that that's our top priority. We are working on
3 this budget change proposal so that we can submit it to
4 the Department of Finance as soon as possible.

5 And that concludes my report unless you have a
6 question.

7 PRESIDENT CARTER: Mr. Brown?

8 MEMBER BROWN: Mr. Chairman. I'm pleased to hear
9 of the two attorneys. I think that is appropriate if we
10 certainly can budget for them, because there will be
11 hearings in which our staff may be bifurcated, in which
12 part of the staff could be a party and then the hearing
13 officers of course being mutual to the issue.

14 But I think it's extremely important, right now,
15 that we try to expedite the procurement of an attorney to
16 work with us on these issues, with the new legislation and
17 setting the Board on this new course. It appears that the
18 new course is going to be something similar to the
19 Porter-Cologne Act, which the State Water Board has worked
20 under for years, the ex parte rule and the quasi
21 legislative and quasi judicial-type hearings.

22 And in that case, we certainly need an attorney, I
23 think, to advise us on our best to put together our
24 association with the Department of Water Resources and
25 others.

1 No doubt, the Department of Water Resources will
2 become a party itself on issues before this Board.
3 Therefore, I think having an independent counsel right now
4 to help guide this Board through those water issues is
5 extremely important. That might be best discussed on
6 issue Item No. 9, coming up later on.

7 PRESIDENT CARTER: Okay. Thank you.

8 Any other questions, comments?

9 MEMBER BURROUGHS: I have one comment.

10 With this new budget, as the bill was proposed to
11 the governor, on the bottom it stated, "No fiscal impact,"
12 and I was just curious as, if there was any comments about
13 how was it written that there was no fiscal impact when
14 there definitely is?

15 VICE PRESIDENT HODGKINS: Just a couple of things.
16 It says, "No fiscal impact." It's the one that
17 reorganizes the Board. Okay? And you could argue about
18 what the Board's salaries are and fiscal impact. The
19 others result from other pieces of legislation that didn't
20 say there was no fiscal impact.

21 So these duties that could have been assigned to
22 the old Rec Board or the new Flood Control Board, like,
23 for instance, the AB 162 support. And I think only the
24 attorney at the State Plan of Flood Control, those are
25 associated with other pieces of legislation that didn't

1 say, "No fiscal impact," which doesn't mean the money will
2 be appropriated.

3 MEMBER RIE: I was just wondering if there's
4 enough money, if \$1.8 million is going to cover all the
5 new staff members plus it sounds like we potentially may
6 need to get an independent attorney for our Board and that
7 attorney, that will advise the Board, may not be from DWR.

8 So is there enough money in the budget change
9 proposal to seek out an outside attorney?

10 SENIOR ENGINEER BUTLER: These numbers reflect the
11 intent to seek an outside attorney, not transfer it over
12 from DWR.

13 MEMBER RIE: Okay.

14 PRESIDENT CARTER: Any other questions for
15 Mr. Butler?

16 MEMBER BROWN: No, but I suggest the attorney,
17 whoever we get to represent this Board, would be
18 well-versed on the Porter-Cologne Act itself, well-versed
19 on it.

20 PRESIDENT CARTER: Okay. Very good.

21 Thank you, Mr. Butler.

22 That concludes the General Manager's Report?

23 GENERAL MANAGER PUNIA: Yes, thank you.

24 PRESIDENT CARTER: Okay. I want to apologize.

25 I jumped the gun on Item 7, Three Rivers Levee

1 Improvement Authority.

2 There was a member of the public who did want to
3 comment on that, Mr. Rice. And I apologize profusely for
4 overlooking your card here. But please come up and
5 address the Board at this time.

6 MR. RICE: Thank you. I'm Thomas Rice, owner of
7 Rice River Ranch. I will be concise here, as the
8 situation has already been referenced and covered in the
9 TRLIA report.

10 As had been mentioned, we are working hard with
11 TRLIA to have an agreed, compromised, cooperative proposal
12 succeed, an agreement that reserves valuable, sustainable
13 agricultural while still providing a high agree of public
14 safety we all desire.

15 It needs to be clearly understood that this
16 proposal we are working through fully serves public safety
17 as well as allowing the survival of this valuable part of
18 the community. It is a win-win, and it needs to be seen
19 through.

20 At the last Reclamation Board meeting, I
21 emphasized that TRLIA are not the only ones who have to
22 deal with timing, seasons, contracts, and financial
23 matters; our farm does as well, of course. At that
24 meeting, I urged TRLIA to commit to this agreement while
25 working through the review process and then polish their

1 designs.

2 In the meantime, Rice River Ranch could not wait
3 for this process to complete. In order to work in good
4 faith toward this agreement, we had to proceed with
5 preparation of our ranch for the changes that are part of
6 this proposal. For example, we have already begun and are
7 clearing trees, ripping soil, resetting irrigation
8 systems, and preparing the berms for the trees that are to
9 be moved.

10 To have waited would have significantly risked not
11 being ready in a timely manner. Rice River Ranch has
12 proceeded, at our own initial expense, in order to be
13 acting in good faith toward the successful completion of
14 this agreement.

15 We would again ask TRLIA to similarly and
16 diligently commit themselves to this effort in their
17 planning and reviews to ensure this matter proceeds as we
18 have agreed. And we would again ask this Board and your
19 staff to encourage such a commitment and to, as possible,
20 assist TRLIA in any issues or difficulties they might
21 encounter through this process.

22 The other item I have here is, I know Mr. Brunner
23 and Mr. Shapiro have asked for a letter from me to this
24 effect. I will be glad to provide you with a signed copy
25 of what I have here today. Hopefully, that will suffice.

1 As I said, I will keep my comments brief. I thank
2 you again for your time and your attention and your
3 patience. And I will gladly take any questions.

4 PRESIDENT CARTER: Any questions for Mr. Rice?

5 SECRETARY DOHERTY: What's the timeline they gave
6 you?

7 MR. RICE: The issue they have detailing with has
8 been in, as Mr. Brunner mentioned, talking with the Corps.
9 And I believe they are -- is it Monday now? It is -- this
10 Monday, they will be talking with the Corps. But in order
11 to be able to do some of the work they need to do over the
12 winter, we have to get heavy equipment in before the rain
13 started. And even though they were not -- did not give
14 their committal to us before the review process, in good
15 faith, I had to go forward and start clearing our orchard
16 lands, start preparing my land so that I would not be the
17 hold-up should this proposal hopefully be approved.

18 So I have asked for your help and your
19 encouragement to see if this can go forward. I am doing
20 all I can from my end.

21 MEMBER BURROUGHS: You have our help and
22 encouragement. And thank you for acting in good faith.

23 MR. RICE: Thank you.

24 PRESIDENT CARTER: Any other questions for
25 Mr. Rice?

1 VICE PRESIDENT HODGKINS: I simply, I guess, would
2 pass on to TRLIA, if there's a way the Board members can
3 assist you in this, let us know and we will let the
4 subcommittee know. We will do the best we can to help
5 out. I mean, I think this is a very important part of
6 this overall project. So don't hesitate to holler.

7 PRESIDENT CARTER: Very good.

8 MR. RICE: Thank you.

9 PRESIDENT CARTER: Thank you very much. And
10 again, I apologize for delaying your comments.

11 At this time, ladies and gentlemen, let's take a
12 ten-minute recess, and then we will reconvene in ten
13 minutes and continue on our agenda, on Item No. 8.

14 Thank you.

15 (Thereupon a break was taken in
16 proceedings.)

17 PRESIDENT CARTER: Ladies and gentlemen, if you
18 could take your seats, we'll continue with your meeting.

19 As a reminder, we are on Item 8, Requested
20 Actions -- Applications. This is Application No. 17659-A,
21 River Partners, Glenn County, considering an application
22 to plant mixed riparian forest, elderberry, woodland,
23 valley oaks savanna, and grassland on 136 acres within the
24 Butte Basin.

25 What we do is, staff will make their presentation;

1 the applicant will come up and address the Board and
2 answer any questions; and then we'll open it up to public
3 comment.

4 With that, Mr. Fua, good morning.

5 SUPERVISING ENGINEER FUA: Thank you,
6 Mr. President and good morning, Board Members. For the
7 record, my name is Dan Fua. I'm a staff engineer for the
8 Reclamation Board.

9 (Thereupon an overhead presentation was
10 presented as follows.)

11 SUPERVISING ENGINEER FUA: The application for
12 River Partners to restore the Del Rio Wildland Preserve in
13 Glenn County was last heard before the Board on February
14 16, 2007.

15 After a motion to approve the permit failed, and
16 another motion to deny the permit didn't get a majority
17 decision, the Board directed staff to continue working
18 with River Partners and Levee District No. 3 to resolve
19 the remaining issues surrounding this application.

20 The following month, staff, together with Board
21 Members Butch Hodgkins and Lady Bug Doherty met with the
22 parties, River Partners and Levee District No. 3, and
23 toured the project site.

24 There were discussions made about the issues,
25 about but no issues were achieved. About a month and a

1 half ago, River Partners approached staff and requested
2 that their application be put before the Board again. And
3 staff did try to arrange a meeting between the two parties
4 to again continue the discussions to resolve the issues.

5 Unfortunately, both parties concluded that there
6 are no new developments to, you know, meet again. So
7 staff decided that we'll bring this application back
8 before you, for a final decision.

9 --o0o--

10 SUPERVISING ENGINEER FUA: So the Board action
11 that staff is requesting for you now is to consider
12 approval of the encroachment permit to plant elderberry,
13 mixed riparian forest, woodland, valley oaks savanna, and
14 grassland on this 136-acre parcel that River Islands owned
15 in Glenn County.

16 --o0o--

17 SUPERVISING ENGINEER FUA: So to refresh your
18 memory, this is the map and general area vicinity map of
19 the project. This is the project site here. This is in
20 Glenn County. This is about 5 miles from Butte -- north
21 of Butte City, about a mile from the Sacramento River.
22 And north of it is, which is not listed here, is Llano
23 Seco Ranch.

24 The project is in the Butte Basin and the Butte
25 Basin, as you know, is part of the state plan of flood

1 control. And for that reason, that's the reason why the
2 board, you know, regulates any activities for this area,
3 to ensure that flood flows are not impeded.

4 As you recall, the Butte Basin is a natural
5 overflow from flows from the main channel of the
6 Sacramento River.

7 --o0o--

8 SUPERVISING ENGINEER FUA: This is the close-up
9 view of the Del Rio Wildland Preserve. It covers 259
10 acres, divided into three parcels. The 96 acres is on the
11 east, and it has been restored and planted with riparian
12 vegetation, and they received an encroachment permit from
13 the Board in December 2003. The 27-acre parcel is an
14 existing riparian vegetated area, so there is no plan to
15 do anything here.

16 The subject of this application is this 136-acres.
17 As I mentioned before, they are proposing to restore this
18 site into a riparian area, proposing to plant vegetation
19 and in particular the elderberry shrubs here. And this is
20 the subject of heavy discussions, as you may recall,
21 during the last two Board meetings, actually. This is our
22 project levee here. So Levee District 3 is the local
23 maintaining agency for this project levee.

24 --o0o--

25 SUPERVISING ENGINEER FUA: The issues. Well, it's

1 the introduction -- the number one concern is the
2 introduction of elderberry shrubs into the area. The
3 elderberry shrub is habitat for the valley elderberry
4 longhorn beetle, which is an endangered specie and is
5 therefore protected. So the concern is introducing
6 elderberry shrubs in the area will have a heavy potential
7 impact to the ability of LD3 and the Reclamation Board and
8 any maintaining agencies to maintain the levee and the
9 Butte Basin Floodway because there are strict reservations
10 about, you know, taking out this plan.

11 The second issue, the end result is the long-term
12 maintenance and financial plan. Obviously, you plant
13 vegetation and they tend to grow and therefore, you know,
14 maintenance is required. And the applicant did submit a
15 draft maintenance plan to us but it lacked the financial
16 plan.

17 The other issue is hydraulic impact. The current
18 site is a walnut orchard that they are going to replace it
19 with vegetation that could become dense. Therefore, there
20 is a concern that the dense -- the vegetation that becomes
21 dense may impact or impede the flows on the Butte Basin.

22 And the fourth issue is the loss of tax revenue.
23 This is actually raised by Glenn County. And this is when
24 the site is transferred to a state or federal agency after
25 it's been restored. This is the plan with River Partners,

1 that once the site is restored, they will transfer the
2 ownership and maintenance of this property to the state or
3 a federal agency.

4 --o0o--

5 SUPERVISING ENGINEER FUA: So in order to address
6 these concerns, River Partners has submitted a lot of
7 information to us, studies, and support letters and has
8 secured a safe harbor agreement, together with an
9 incidental take permit.

10 So the safe harbor agreement actually provides for
11 planting of 1,500 elderberry plants within 136 acres of
12 the Del Rio Wildland Preserve.

13 But it also allows incidental take of valley
14 elderberry longhorn beetle habitat. This is also
15 contained in the take permit.

16 In addition, the safe harbor agreement also allows
17 the return of the land to base land condition after the
18 expiration of the safe harbor agreement.

19 --o0o--

20 SUPERVISING ENGINEER FUA: Long-term maintenance.

21 Let me go back about the elderberry first. Well,
22 I will discuss that later.

23 --o0o--

24 SUPERVISING ENGINEER FUA: The long-term
25 maintenance.

1 The staff, in order to address the long-term
2 maintenance, we have special conditions included in the
3 draft permit that I will discuss later.

4 We also received a letter from the Department of
5 Fish and Game, who is a potential recipient of this site.
6 And that letter assured us that they are willing and able
7 to properly maintain this site if it is transferred to
8 them. Currently, they are maintaining the Upper Butte
9 Wildlife Area, and they have a budget of over a million
10 dollars and staff and equipment to maintain this
11 additional site.

12 We also have a letter from the U.S. Fish and
13 Wildlife Service that clarified the safe harbor agreement,
14 a clarification on who is authorized to conduct or
15 authorize taking of the elderberry shrubs, and that
16 includes Levee District 3. It is clarified that that will
17 include Levee District 3 and the Reclamation Board and any
18 maintaining agency.

19 The Service letter also clarified that elderberry
20 shrubs that may have spread is also part of this
21 incidental take permit. They can -- any local maintaining
22 agency authorized by the safe harbor agreement can take
23 elderberry shrubs within the site, whether it was planted
24 there or whether it's as a result of natural spreading.

25 --o0o--

1 SUPERVISING ENGINEER FUA: The special permit
2 conditions that staff added in order to address both the
3 concern about elderberry plantings and the long-term
4 maintenance. Condition 13 is one. And it's in the draft
5 permit, and specifically, in summary, it says that River
6 Partners have to enter into an agreement with the Board to
7 ensure that the project does not interfere with flood
8 conveyance.

9 The second condition that we added is that the
10 site be restored to baseline condition, what it is right
11 now, prior to transfer of the property to the state or the
12 federal government, unless, of course, the state or the
13 federal government would enter into the same long-term
14 maintenance agreement with the Board. So that's in the
15 draft permit.

16 The third condition that we added is that the site
17 should be restored to baseline condition one year prior to
18 the expiration of the safe harbor agreement, provided
19 three things happen: First, you know, the valley
20 elderberry longhorn beetle is still listed and we have a
21 problem with continuing planting or returning the site to
22 baseline condition; second, that a biological opinion will
23 be secured and authorize us, Levee District 3, and any
24 other agencies to take -- to be authorized to take
25 elderberry shrubs.

1 --o0o--

2 SUPERVISING ENGINEER FUA: The third issue that we
3 have been discussing is about hydraulic impacts. And as
4 I've said earlier, the concern is that once the vegetation
5 grow, there is the potential impact to impede the flood
6 flows in the Butte Basin.

7 --o0o--

8 SUPERVISING ENGINEER FUA: This is the velocity
9 profile generated by a two-dimensional model of the Butte
10 Basin and the Sacramento River developed in 1997 for the
11 Reclamation Board and the U.S. Army Corps of Engineers,
12 and actually this velocity profile is the result of an
13 update by MBK Engineers for River Partners.

14 The colors here indicate the velocity in the
15 areas. The purple color denotes a velocity of about
16 0.5 feet per second, and the area where the project is
17 located is generally located in that vicinity. So the
18 flow during floods in this area is very slow, 0.5 feet per
19 second, and that translates to about .005, it's very
20 minuscule; the rise in the elevation of the water is very,
21 very small.

22 MEMBER BROWN: Is that at mature growth?

23 SUPERVISING ENGINEER FUA: I believe so, yes, at
24 mature growth.

25 And the assumption is that the vegetation would

1 completely stop the flow of the flood flows. And even
2 with that, with this velocity, the rise in the water
3 surface is very small.

4 MEMBER RIE: What is it exactly in the
5 hundred-year flood, the change in water surface elevation?

6 SUPERVISING ENGINEER FUA: The flows that we use
7 for this modeling is -- the design flows is a 111 cubic
8 feet per second.

9 MEMBER RIE: What is the change in water surface
10 elevation in a hundred-year flood?

11 SUPERVISING ENGINEER FUA: Well, I don't know what
12 this 111 cubic feet per second flow is, but the rise in
13 flow with the project is that, what I mentioned, .005 --
14 .05 of an inch of the design flow.

15 MEMBER RIE: What's the design flow --

16 SUPERVISING ENGINEER FUA: 111 cubic feet per
17 second.

18 MEMBER RIE: Is that the hundred-year, 50-year?

19 SENIOR ENGINEER BUTLER: It's the '57 design
20 profile.

21 SUPERVISING ENGINEER FUA: I don't know if it is a
22 hundred.

23 MEMBER RIE: Is it a ten-year storm?

24 SUPERVISING ENGINEER FUA: But that's the design
25 flow, is what we are concerned with.

1 MEMBER RIE: But with the design flow, the change
2 in water surface elevation is .05 inches, and with the
3 addition of the elderberry bushes.

4 SUPERVISING ENGINEER FUA: With the addition of
5 all the riparian vegetation that they are proposing to
6 plant.

7 MEMBER RIE: At maturity of the plant?

8 SUPERVISING ENGINEER FUA: Right.

9 So based on the modeling results, staff and the
10 consultant agreed that the hydraulic impact is not there.

11 The fourth --

12 GENERAL MANAGER PUNIA: I just wanted to make a
13 comment on the hydraulic impact. The area is usually a
14 several-mile-wide area, so it's not a confined section in
15 the levee, so it's an overflow area several miles wide.
16 So that's why hydraulic impact and associated change in
17 the water surface profile is not a major issue in my mind.

18 SUPERVISING ENGINEER FUA: Yeah. The vegetation
19 is actually about 170,000 acres, about 35 miles long, and
20 about 2 to 12 inches -- miles in width. So it's a huge
21 area.

22 MEMBER BROWN: At the 136 acres, it's 2 miles wide
23 there?

24 SUPERVISING ENGINEER FUA: No, I am saying the
25 entire Butte Basin.

1 MEMBER BROWN: What's the width at the 136 acres?

2 MR. EFSEAFF: Hi. I am Dan Efseaff. I'm a
3 restoration ecologist with River Partners.

4 The project footprint is about 1,200 feet wide,
5 and the width of the floodplain in that area is over
6 20,000 feet wide.

7 MEMBER BROWN: So you are saying it's three to
8 four miles wide where the 136 acres is?

9 MR. EFSEAFF: Yeah. And Joe Countryman is here
10 and can probably address your question of hydraulics.

11 MEMBER BROWN: I don't think it's that wide.

12 SECRETARY DOHERTY: It's not. It's not even a
13 mile wide.

14 SUPERVISING ENGINEER FUA: Are you looking at the
15 map that I was --

16 MEMBER BROWN: You're necking it down for where
17 the 136 acres is, and we were out there looking at it the
18 other day, and I don't know, I don't think it was a mile
19 wide. It's not a mile wide.

20 SUPERVISING ENGINEER FUA: Not the project site.
21 But the boundary of the Butte Basin is what I'm talking
22 about.

23 MEMBER BROWN: The boundary may be right, but the
24 water's got to flow through this constructed area that
25 you're speaking of.

1 SUPERVISING ENGINEER FUA: Right. But that's not
2 the only area where water can flow. Water can flow the
3 entire Butte Basin.

4 MEMBER BROWN: Are we looking at the same site,
5 Mr. Chairman?

6 PRESIDENT CARTER: Which --

7 SECRETARY DOHERTY: This is the entire width of
8 the basin.

9 PRESIDENT CARTER: I'm not sure which visit you
10 are referring to, Mr. Brown.

11 During the October Board meeting we were north of
12 the site on the Sacramento River at the M&T Weir, and the
13 Phelan levee, which is approximately 8 to 10 miles north
14 of this particular project site.

15 MEMBER BROWN: Oh, okay. Oh, okay.

16 PRESIDENT CARTER: So in the October meeting, we
17 did not view this site.

18 MEMBER BROWN: Okay. I thought this was the same
19 sight. My apologies.

20 MR. COUNTRYMAN: Joe Countryman, MBK Engineers.

21 This map might help clarify it. The project is
22 located -- I'm sorry. My hand is shaking a little bit
23 here, right where the arrow is there, and you can see the
24 full width of the basin is enormous compared to that. So
25 it's a very small part of the total width of the basin.

1 MEMBER BROWN: Okay. I understand that.

2 Thank you.

3 SUPERVISING ENGINEER FUA: One other thing that I
4 would like to mention to correct my staff report is about
5 the request by the Board last week -- I mean last meeting,
6 that the safe harbor agreement should include the
7 Reclamation Board, the authority to require or conduct
8 flood management activities. That hasn't been done by
9 River Partners yet. So the safe harbor agreement and the
10 take permit has not been amended to reflect that request.

11 --o0o--

12 SUPERVISING ENGINEER FUA: The fourth issue is the
13 loss of tax revenue. And that is when the site is
14 transferred to the government agency. And legal counsel
15 informed us that the Board's authority may be limited in
16 this regard to acquire revenue.

17 --o0o--

18 SUPERVISING ENGINEER FUA: So the staff
19 recommendation is to approve the draft permit subject to
20 the amendment of section 10, Item 3, of the safe harbor
21 agreement, and section 5, the Federal Fish and Wildlife
22 permit -- this is the take permit, the incidental take
23 permit -- to include, to give the authority to the
24 Reclamation Board, Levee District 3, the U.S. Army Corps
25 of Engineers, and all successor agencies -- these agencies

1 to be able to authorize doing flood control management
2 activities without being subjected to the regulatory
3 restrictions of the Endangered Species Act.

4 That concludes my presentation, and I would be
5 glad to answer any questions that you may have.

6 MEMBER SUAREZ: Mr. President?

7 PRESIDENT CARTER: Go ahead.

8 MEMBER SUAREZ: I have a follow-up question,
9 because, unfortunately, I wasn't here when you had the
10 original discussion. So some of the questions I have are
11 probably pretty basic.

12 If you don't mind going back to this slide, the
13 area with the 27 acres, with the boundary here with the
14 levee, you said that's all riparian vegetation now.

15 SUPERVISING ENGINEER FUA: Correct, the 27-acre
16 parcel.

17 MEMBER SUAREZ: Can you talk to me about how the
18 levee's behaving on that side of the -- of the -- of where
19 there is --

20 SUPERVISING ENGINEER FUA: "Behaving" meaning?

21 MEMBER SUAREZ: Meaning how the flows are going,
22 how the vegetation is contributing with the levee, if at
23 all.

24 SUPERVISING ENGINEER FUA: Okay.

25 MEMBER SUAREZ: That conditions in those areas are

1 different than the conditions in the --

2 SUPERVISING ENGINEER FUA: -- on the 27-acre
3 parcel because there's an existing riparian vegetation
4 there.

5 MEMBER SUAREZ: But what's happening on the 27
6 acres, what we're going to see happen in 136, if this goes
7 through; correct? That kind of vegetation?

8 SUPERVISING ENGINEER FUA: Well, the 27 acres, I
9 believe, does not have -- I don't know if there's
10 maintenance, regular maintenance there.

11 MEMBER SUAREZ: Can you address what's happening
12 there in terms of --

13 SUPERVISING ENGINEER FUA: I think Levee District
14 3 could probably address that question better than me.

15 Would somebody from Levee District 3 address that
16 question?

17 MEMBER SUAREZ: I'm curious to know hydraulically
18 what's happening in that area.

19 MR. LARRABEE: Good morning. Eric Larrabee, Levee
20 District 3.

21 Your question is, what is the condition of the
22 levee on the 27 acres?

23 MEMBER SUAREZ: Yes.

24 MR. LARRABEE: That's on the inside of the levee.
25 I would say, that side has been maintained by the prior

1 landowners. There was a road in place. It has a wide --
2 it's inside the curve. It's a wide slope. And there are
3 some elderberry growing there. There's one there now.
4 But it's not bad.

5 MEMBER RIE: Since you're standing there, can I
6 ask you a question? The last time this item came before
7 our Board, I know the levee district had several issues
8 with regard to the maintenance of the levee and
9 potentially the elderberries interfering with maintenance.

10 Were your issues ever resolved?

11 MR. LARRABEE: No, they have never been resolved.

12 PRESIDENT CARTER: Let's go ahead and continue
13 with the questions for the staff.

14 Mr. Bradley, did you have a comment?

15 CHIEF ENGINEER BRADLEY: I'm not sure Ms. Suarez's
16 comments were addressed. Did you -- were they addressed
17 to what you were asking?

18 MEMBER SUAREZ: Well, what I'm trying to hear is,
19 does the landscape look different on that side? And what
20 I'm understanding is, the project area might end up
21 looking -- similar landscapes. And I'm just curious to
22 know how the levee is functioning on that side,
23 hydraulically and with vegetation.

24 CHIEF ENGINEER BRADLEY: Right. It is in the
25 floodway, the Sacramento River floodway, the 27 acres.

1 The 136 and the 96 acres are in the Butte Basin overflow
2 area. And the levee divides those. To my knowledge,
3 there aren't severe problems with that levee in that area.

4 Is that what you were asking?

5 MEMBER SUAREZ: Then I have a question regarding
6 the safe harbor. Who's the -- who's signing to that
7 agreement?

8 SUPERVISING ENGINEER FUA: The agreement is
9 between the U.S. Fish and Wildlife Service and River
10 Partners. There is a condition that says, Department of
11 Water Resources is authorized to conduct flood management
12 activities and not be subject to the restrictions of the
13 Endangered Species Act.

14 MEMBER SUAREZ: So the incidental take permit
15 includes that language?

16 SUPERVISING ENGINEER FUA: Right. Correct. And
17 that's what we're trying to get amended also that it
18 should include the Reclamation Board Levee District 3, the
19 U.S. Army Corps of Engineers, and other successor
20 agencies.

21 MEMBER SUAREZ: And that has not happened?

22 SUPERVISING ENGINEER FUA: That has not happened.

23 MEMBER SUAREZ: Thank you.

24 SUPERVISING ENGINEER FUA: So that's why my
25 recommendation is to approve it, conditioned upon amending

1 the take permit and safe harbor agreement.

2 SECRETARY DOHERTY: So that would do for the
3 agency that takes over that acreage, but what happens with
4 the seedlings that go down onto the neighbors and sprout?

5 SUPERVISING ENGINEER FUA: The safe harbor
6 agreement only includes the Del Rio Wildland Preserve.

7 Any elderberry shrubs that may grow outside what
8 they call the ingrown property will not be covered under
9 that unless the enabling property owners would sign up
10 with the Fish and Wildlife Service like that -- a similar
11 safe harbor agreement, which my understanding is, it's
12 less restrictive than what River Partners has to do.

13 MEMBER BROWN: Question, Mr. Chairman.

14 PRESIDENT CARTER: Yes.

15 MEMBER BROWN: It may be more of a legal question,
16 but even with the agreement, the return to baseline
17 conditions with Fish and Wildlife and Fish and Game, that
18 wouldn't preclude the NRDC or some other agency from
19 stopping that from taking place, would it not?

20 SUPERVISING ENGINEER FUA: The -- okay. The
21 requirement to return the baseline condition -- to
22 baseline condition is -- will be true to whoever owns it
23 in the future.

24 MEMBER BROWN: I understand that. I'm just asking
25 the question, if -- even though you have the state and

1 federal agreements with each other to do that, that would
2 not preclude a suit being brought on by on outside agency,
3 meaning any return to base line conditions. And I think
4 there's some vulnerability there. That's a question, not
5 a statement.

6 PRESIDENT CARTER: Okay. I have one question, Mr.
7 Fua, just as a point of clarification. You said that in
8 2003, the Reclamation Board approved an encroachment
9 permit for River Partners to restore this project site to
10 everything except elderberries; is that correct?

11 SUPERVISING ENGINEER FUA: That's correct. The
12 permit in December 2003 is for the 96-acre parcel, and the
13 permit specifically prohibits planting of elderberries.

14 PRESIDENT CARTER: Okay. And at that time, the
15 request of River Partners was to include elderberries in
16 that permit?

17 SUPERVISING ENGINEER FUA: Correct.

18 PRESIDENT CARTER: Okay. And so now we are only
19 looking at the 136 acres, which is immediately adjacent to
20 the west of the property that was subject to the prior
21 permit in 2003.

22 SUPERVISING ENGINEER FUA: That's correct. And
23 the change -- I guess the change that happened, the
24 difference is, the 96-acre -- during the adoption of the
25 application of the 96-acre parcel, there was no safe

1 harbor agreement and the incidental take permit. So now,
2 with that, staff is a little more confident that, you
3 know, the impact of elderberry planting will be minimized.

4 PRESIDENT CARTER: And should elderberries
5 propagate onto the 96-acre parcel to the east, does the
6 safe harbor cover?

7 SUPERVISING ENGINEER FUA: Correct, the safe
8 harbor agreement covers the entire 259 acres of River
9 Partners Wildland Preserve.

10 PRESIDENT CARTER: Okay.

11 SECRETARY DOHERTY: But ten elderberry bushes did
12 go in, on the 96 acres?

13 SUPERVISING ENGINEER FUA: That's correct. I was
14 asking the general manager that, and these ten elderberry
15 shrubs were shrubs that were transferred by the Department
16 of Water Resources in connection with the emergency levee
17 repair project in 2006.

18 MEMBER BURROUGHS: When it specifically said that
19 no elderberries were being planted there?

20 SUPERVISING ENGINEER FUA: Yes. There was a
21 waiver made, a waiver to that requirement.

22 PRESIDENT CARTER: Any other questions for staff?

23 MEMBER BURROUGHS: I guess just -- I'm having a
24 hard time swallowing that, that there's no impact to water
25 flow in that area. It doesn't matter how slow the water

1 flows. If there are barriers of plants that are planted
2 there, it absolutely has an impact on our water flows.

3 SUPERVISING ENGINEER FUA: Yeah. The minuscule
4 rise in the water surface elevation.

5 Maybe Joe, can you explain that in layman's term,
6 where the water would go?

7 My thing is, the water will be spread. It will be
8 impeded, but it will spread because of the wide area of
9 the Butte Basin.

10 MR. COUNTRYMAN: Well, in the simplest terms that
11 I can make it, the potential impact for increasing the
12 water surface elevation is directly related to the
13 velocity of the flow and the simplest way to think about
14 this is, if there was zero follow, like a bathtub, you
15 could put 10 million trees in there and you are not going
16 to change the water surface because of resistance to flow.
17 Okay?

18 So the energy related with the flow velocity is
19 where you can get an increase in stage by having
20 vegetation in the channel. So when the velocity is very
21 low, the potential for any increase in water surface
22 elevation is very, very minimal.

23 In this case, the water -- the velocity is so slow
24 that it's below negligible, the potential. And the
25 analysis we did didn't even allow for any flow through the

1 elderberries. We assumed they would be completely blocked
2 off like a wall. In reality, the impact would be even
3 less than that because there would be flow through there.

4 So as far as potential impact to the flood system,
5 it is extremely small. The other thing to remember is
6 that the basin is 20,000 feet wide. There's water on both
7 sides of this levee. This is not a levee that is keeping
8 water off of dry land. You have got water on both sides
9 of the levee and it's -- the primary purpose of the levee
10 is to govern the split of flows between the Butte Basin
11 and the Sacramento River.

12 So all in all, the hydraulic impact really should
13 not be an issue. In my estimation, in my professional
14 experience, it is not a potential impact.

15 MEMBER BURROUGHS: I have another question in
16 regards to -- Dan said it was also going to be used for
17 recreational use. How would this area be used for
18 recreational? And it said also educational. I can
19 address through my presentation.

20 MR. EFSEAFF: I can address that through my
21 presentation. Is this a good time?

22 PRESIDENT CARTER: Just a second. Any other
23 questions for staff?

24 MEMBER BROWN: Is the elderberry a host plant for
25 any pests of the agricultural community?

1 SUPERVISING ENGINEER FUA: Pardon me?

2 MEMBER BROWN: Is the elderberry plant a host
3 plant for any pesticide or pests for the agricultural
4 community?

5 SUPERVISING ENGINEER FUA: Not to my knowledge.
6 It's the host plant for the beetle.

7 Any one from the LD3 staff that could add to --
8 answer that.

9 MEMBER BROWN: That's an important question for
10 the agricultural community and the neighborhood.

11 You haven't studied that?

12 MR. EFSEAFF: I can address that also during my
13 turn.

14 PRESIDENT CARTER: Any other questions for staff?
15 Very good.

16 At this time, we would like to invite --
17 Mr. Efseaff, are you presenting for River Partners?

18 Good morning. Welcome.

19 MR. EFSEAFF: Thank you, Chairman Carter. My name
20 is Dan Efseaff. I'm a restoration ecologist with River
21 Partners. I'm a resident of Butte County.

22 Just to answer -- amend a couple of statements
23 that Mr. Fua made during his presentation.

24 I believe in your packet of information, there's a
25 copy of the safe harbor agreement, and I believe that the

1 first couple of pages has a letter of concurrence that
2 modifies the language to include the Reclamation Board.

3 (Thereupon an overhead presentation was
4 presented as follows.)

5 MR. EFSEAFF: And that would address that issue
6 about the language, at least part of it. I think Mr. Fua
7 had suggested a more inclusive list. And that would be
8 okay with us as well.

9 MEMBER BURROUGHS: I am not finding your
10 reference. Could you specify which letter it is?

11 MR. EFSEAFF: Yeah. Actually in the -- Mr. Fua?

12 SUPERVISING ENGINEER FUA: I would like to correct
13 Mr. Efseaff that the letter that says it was amended, it
14 was actually amending the wrong safe harbor agreement. So
15 as far as staff is concerned, there was no amendment.

16 MR. EFSEAFF: It's something that we would accept.
17 The language is not a problem. And it took -- the letter
18 of concurrence took about 30 days to go through Fish and
19 Wildlife for approval.

20 In the packet that I submitted today, staff has
21 letters of support. There are 40 letters from adjoining
22 land owners, members of the community, business folks, and
23 education. And just about a stack there I think gives
24 sense of at least the 96 acres initial project, what
25 that's meant for the community. There's been hundreds of

1 school kids on the site. There have been recreational
2 trips for birdwatching, hunting, some educational
3 occurrences of those kinds.

4 A couple questions that came up earlier that I
5 just wanted to address. One is that of course we have Joe
6 Countryman from MBK to answer any hydrology questions. We
7 also have, from Fish and Wildlife Service, Rick Kuyper who
8 can address some of the technical details about the safe
9 harbor.

10 And just a couple of the questions that came up as
11 far as the plan itself, a question came up regarding the
12 host for the adverse insects. As far as the studies go,
13 it's actually been demonstrated, it's a beneficial plant,
14 that UC Cooperative Extension actually recommends the
15 elderberry as a host plant for beneficial insects such as
16 pollinators. So that's probably not an issue as far as
17 what we've seen on the plant.

18 I want to correct a couple of things I heard on
19 the 11 -- it's actually 11 elderberries have been
20 transplanted to the site. We were approached by
21 Department of Water Resources as part of the emergency
22 levee repairs to help streamline their mitigation process,
23 to help transplant and find a home for eleven of these
24 plants. We received an additional permit for those
25 plants. It's very specific for DWR plants. So it allows

1 elderberry, but only DWR-approved elderberry related to
2 that emergency levee repairs.

3 One question that I heard was addressing the
4 hydraulic impact. Part of it is, we modified the design.
5 If you look at that 96 acres, it's far less dense than the
6 previous almond orchard that was out there. It has long
7 corridors that allow flood conveyance. And that's the
8 area that's most likely to receive the higher velocity,
9 across the whole property. So we've kind of, up front,
10 done any sort of conveyance issues by allowing that change
11 out there.

12 I would be happy to answer any other questions.
13 And John Carlin will speak at the end here, to wrap up any
14 questions that come up during the presentations.

15 MEMBER RIE: I have a question.

16 PRESIDENT CARTER: Go ahead.

17 MEMBER RIE: Will the public have access to this
18 land for recreation purposes, or do they have access only
19 by invitation?

20 MR. EFSEAFF: The public has access now. What we
21 have, we have a permit system that we ask people to just
22 contact us, but they can access it now. It's at an
23 intersection of two county roads, so it has pretty easy
24 access for the public, and we want to encourage that.

25 You can imagine, during the course of ag

1 operations or during the course of restoration, we have,
2 typically, groups that come out on weekends that are set
3 dates. But it's open to the public right now.

4 MEMBER RIE: But you have to get a permit?

5 SUPERVISING ENGINEER FUA: Just so our folks know
6 that somebody belongs on the site. So if they see
7 somebody out there, it's somebody that we know belongs out
8 there.

9 SECRETARY DOHERTY: And what kind of hunting do
10 they do?

11 MR. EFSEAFF: There's a duck club next door. They
12 are actually -- one of the letters from the Hidden Valley
13 Duck Club, they were very excited about the project
14 because they want to enhance their upland game, so there's
15 pheasant, there's quail, there's dove, that our project's
16 improving because we have a native grass component.

17 We also have kind of an innovative fence line out
18 there. We have some blackberry rows and poison oak
19 planted to discourage the folks from crossing over onto
20 their property but also provide cover for game species.

21 MEMBER SUAREZ: I have a quick question.

22 PRESIDENT CARTER: Yes?

23 MEMBER SUAREZ: Could you characterize or give me
24 your characterization of discussions that you had where
25 the landowners and the levee district have concern? What

1 in your mind is the impediment of coming to a meeting of
2 the minds?

3 MR. EFSEAFF: Actually, I should point out a
4 couple of things about that. We have excellent relations
5 with our adjoining landowners. We have letters of support
6 from them in the packet. We have Rancho Llano Seco, which
7 is the large landowner to the north has cattle on our
8 property right now, that are doing maintenance, you know,
9 revitalizing native grass, trimming up, if you will, the
10 woody plants out there.

11 The issues with the levee district, I think Mr.
12 Fua characterized it pretty well. I will disagree with
13 one statement that Mr. Larrabee made is that there has
14 been some progress on it. One of the issues that he came
15 up with last year was discussing the maintenance or lack
16 of maintenance on U.S. Fish and Wildlife property. And we
17 instigated a meeting between Levee District 3 and the
18 current managers who had never met with them before. They
19 have completed maintenance on their property and removed a
20 lot of the plants. I do have some slides, if that needs
21 to come up. But they had done quite a bit of work
22 including moving some elderberry on that property, onto
23 another location. So there has been some progress as far
24 as, I think, communication and a sign of good faith by
25 Fish and Wildlife maintenance, out there.

1 MEMBER RIE: Are you guys going to pay the
2 assessments for the levee maintenance, or are you going to
3 stop paying those?

4 MR. EFSEAFF: We voluntarily pay taxes on that
5 property. We're a nonprofit. We've paid taxes on there
6 since we've made the purchase.

7 So this is something that I think John could
8 probably address better at the end here. But we've tried
9 to do this in good faith, on taking care of those issues.
10 I don't know if the venue for it is a Rec Board permit, on
11 imposing the tax on a landowner.

12 MEMBER RIE: But are you planning to pay the levee
13 assessment?

14 MR. EFSEAFF: John, do you want to address that?

15 VICE PRESIDENT HODGKINS: In my involvement in
16 this, I have pursued that question further and can answer
17 it. River Partners pays the tax, although one of the
18 parcels, I think, the existing restored area, is covered
19 by an agreement whereas as a nonprofit, they are not
20 required to pay property tax. They have been paying on
21 the parcel that they propose to plant elderberries on --
22 and you correct me if I get the parcels reversed -- and
23 the 26-acre parcel that's out in the floodway.

24 I think the issue -- and Eric, you correct me if I
25 am wrong. But there is an assessment directly to LD3.

1 LD3 gets limited funding through the property taxes
2 collected by Glenn County. And I assume that's because
3 they were doing that when Proposition 13 passed. And
4 there is a split in property tax after Proposition 13 was
5 based on what the pre-Prop 13 taxes were. And so they
6 still continue to get that. But they are not -- they do
7 not assess their property owners. The property owners
8 have to participate in helping to do the maintenance -- is
9 that a fair statement, Eric -- in order to avoid getting
10 into a situation where they would have to think about an
11 assessment.

12 And while at first you might think it's not a good
13 way to do maintenance, I think it is in an ag area, and
14 they have, over time, been able to build up a reserve of
15 about 50,000 --

16 SENIOR ENGINEER BUTLER: Today, yes.

17 VICE PRESIDENT HODGKINS: -- that is available for
18 their use in an emergency. Now that's not a big reserve;
19 I mean, you can burn that up in the first couple of hours
20 of dumping rock into the Phelan Levee.

21 But I think what it shows is they are doing a fair
22 job of building most of the reserve and taking care of
23 their maintenance with the situation that they have now.

24 And the issue here is that if this property is
25 transferred to a government agency, the government agency

1 doesn't regularly pay his fees in lieu of taxes, even
2 though it's required by law to do it.

3 And that's a real problem for counties like Glenn,
4 Butte, Colusa, which are not rich counties. And the loss
5 of \$5,000 in property tax revenue in a year is
6 significant.

7 And this is a real issue which I'm going to try
8 and get around staff's objection to requiring. I'm going
9 to propose that we add a condition that is reported
10 against the property, that says, if the property is
11 purchased by the State of California, that as part of the
12 purchase, they have to pay a lump sum amount to Glenn
13 County that would be equal to the property tax foregone.
14 That's about, based on current taxes, 40 or 50 thousand
15 dollars. I don't know where it will come from.

16 But I promise you, if it's -- I won't promise you
17 this. But if it's in a condition that runs with the land,
18 like an easement, and the State knows they have to pay it
19 in order to acquire the land and the state wants to
20 acquire the land, they will find a way to come up with the
21 \$50,000 to make that payment to Glenn County.

22 And I don't know if staff's going to allow me to
23 do that. But I absolutely believe that this business of
24 doing all this restoration in poor rural counties and not
25 paying their taxes, or in lieu of the taxes, is something

1 that we, as the Board, who understand the importance of
2 preserving reasonably good relationships with everybody,
3 up and down the system, can't continue to take actions
4 that, in effect, are ignoring the fact that the State is
5 not making its commitments here.

6 If Butte and Glenn County has not received a
7 property tax payment, in lieu, from the state for five
8 years, then it's just an unacceptable way for us to do
9 business in connection with the flood control system that
10 involves the whole valley. And that's why I'm going to
11 propose that condition.

12 But I wanted to try to clarify the whole issue
13 with respect to fees and taxes here.

14 Am I wrong? Have I misstated it in any way, Eric?

15 PRESIDENT CARTER: Mr. Efseaff or Mr. Carlin, has
16 he misstated anything from the River Partners perspective?

17 MR. CARLIN: No. I think Butch has been really
18 accurate. And the only other thing that I would add would
19 be that I think our actual assessment for the levees on
20 the property last year totaled \$1.81. So you know, I
21 guess the other thing, as a landowner out there -- forget
22 we're involved in the habitat restoration business and
23 we're concerned about wildlife. But if I just look at it
24 as a private property owner, if you are spending \$1.81 for
25 the 135 acres to maintain a project levee, it seems like

1 it's just grossly underfunded.

2 And I think there's really severe problems. I
3 agree -- and there's severe problems with county tax
4 revenues, the whole in lieu problem, public ownership of
5 land, and the failure of the state to make good on those
6 in lieu projects, or payments.

7 I guess the only thing I would bring up, and we
8 had this discussion, is, you know, we're here to ask you
9 for an encroachment permit based on the hydraulic impact
10 this project's going to have on the state floodway. And I
11 think Mr. Countryman's made it, you know, clear.
12 Certainly, I think the engineers on your staff have
13 supported that. And I would just like to be on record
14 that based on all the information that we've looked at
15 over the last 18 months that we're applying for this
16 permit, and a year and a half before that, applying for
17 the first permit on this property, so we've been doing
18 this for a total of three years, there's no substantive
19 evidential data that shows there's a negative hydraulic
20 impact on any of the activities that we're proposing.

21 I think the other part of this is, just to try and
22 keep it in perspective, is that we're not going into a
23 community where there's no elderberries and no wildlife
24 and wildlands, and planting these elderberries that are
25 then going to spread across the landscape and cause

1 pestilence and disease.

2 The whole area -- the piece of property adjoining
3 this property upstream is the largest single block of
4 conservation ownership in northern California -- or on the
5 Sacramento River. It's about 14,000 acres. There are
6 tens of thousands of elderberries literally on the
7 property next door. When it floods, all those elderberry
8 seeds, all that is in the mix.

9 So we're not there to introduce something new or
10 extraordinary. What we're looking at trying to do is to
11 add to that large continuous block and build habitat with
12 the goal of delisting the elderberry. And we put a lot of
13 work, with a lot of folk's help, in developing a safe
14 harbor agreement that would accommodate landowners'
15 concerns, work with local levee districts, so that a
16 single elderberry here or there doesn't cause all kinds of
17 problems and cause a lot of additional expense.

18 When the Department of Water Resources called us
19 up and said, "We're trying to implement the governor's
20 flood control objective of emergency levee repair. Do you
21 have any place that we could put elderberries?" We said,
22 here's a spot that's ideally suited for elderberries that
23 would save the taxpayers tens of thousands of dollars in
24 terms of buying mitigation ground.

25 The Rec Board staff came back, wrote a variance to

1 the existing permit and said, "Any emergency DWR
2 elderberries can now go in this location." They are
3 looking at doing that again in the future. There is a
4 direct net saving to the flood control goals and objective
5 by having a place where you can place elderberries that
6 aren't in harm's way, that you have a safe harbor
7 agreement, that is surrounded by conservation land, where
8 all the adjoining landowners are supportive of the
9 project.

10 What we're trying to do is strike a balance.
11 We're trying to find an area where we can protect and
12 restore habitat and wildlife with the absolute minimum
13 amount of negative impact to the state flood control
14 project.

15 And I think if we can't do it here at Del Rio, at
16 this particular spot, I don't know where else in the flood
17 control system these projects are going to happen. And if
18 you look at, as you know, much better than I do --

19 PRESIDENT CARTER: Mr. Carlin, we're kind of
20 getting beyond the tax question here.

21 MR. CARLIN: All right. I thought I had an
22 opportunity to make a statement.

23 PRESIDENT CARTER: If you would like to do that,
24 go ahead. Please wrap up, though. We're running behind.

25 MR. CARLIN: Okay. I think if you look at the

1 goals and objective of the Army Corps, DWR, the state
2 flood control, the integrated flood management plan, all
3 these initiatives are looking at balancing endangered
4 species wildlife habitat with flood control. And this is
5 a model project that does that.

6 I'm not saying there aren't a lot of things that
7 could be done better -- taxes to the county, all the
8 issues that have been brought up here, taxes to the
9 county, better safe harbor agreements, you know, working
10 closer with all the local authorities, all those things,
11 we agree, could be done better.

12 But we're doing the best we can, and I think this
13 is currently one of the best projects out there for this
14 multiple objective -- multiple-goal project.

15 And I'm willing to take any questions.

16 MEMBER BROWN: Mr. Chairman?

17 PRESIDENT CARTER: Go ahead.

18 MEMBER BROWN: That was a good summary.

19 Thank you.

20 Who makes up the River Partners?

21 MR. CARLIN: We're a nonprofit that's been around
22 for about ten years, and half of our board and staff are
23 folks from ag backgrounds who own farms or are farmers;
24 and the other half of us are ecologists and biologists.
25 So we're trying to figure out, how do you find a balance?

1 MEMBER BROWN: And one of your primary purposes is
2 the delisting of the elderberry plant?

3 MR. CARLIN: It's not one of our purposes, but our
4 mission is to create and protect wildlife habitat for the
5 benefit of the environment and people.

6 And we think that if you can delist a species like
7 the elderberry, the environment benefits and we don't get
8 involved in all these expensive, kind of, last minute
9 resuscitation.

10 MEMBER BROWN: Okay. Thank you.

11 MEMBER RIE: And back to the taxes, is River
12 Partners willing to make some sort of the payment, a fee,
13 or something to take care of the levee maintenance?
14 Because the levee goes right through the property and
15 \$1.81 -- I don't know if that was \$1.81 per acre or a
16 \$1.81 total.

17 MR. CARLIN: Total.

18 MEMBER RIE: And that doesn't seem like much
19 money, and I think you recognize that.

20 So have you had any discussions about making the
21 contribution or giving them some money so they feel they
22 can maintain the levees after the property transfers to
23 Fish and Wildlife?

24 MR. CARLIN: The discussion we had before was -- I
25 mean, there's two questions that I think are getting a

1 little bit mixed up. One is the total tax loss to the
2 local county versus this really small assessment that the
3 county then gives back to the levee district.

4 So the \$1.81 is -- that would be really easy to
5 solve, and we could figure out a way to do that. We
6 haven't -- there isn't a legal process identified to do
7 that, in terms of who holds that money and how does that
8 money get paid and that sort of thing. If we look at the
9 broader tax, like how would you make the county -- how
10 would you prevent this failure of the state to pay inland
11 taxes, that becomes something that's kind of much broader
12 than our, you know, small nonprofit. And we would be
13 jeopardizing or funding our relationship with a lot of our
14 partners.

15 MEMBER RIE: I don't think that it's your
16 responsibility to solve the issue of whether or not the
17 State of California pays taxes.

18 But for the 136 acres, have you guys had any
19 discussions about possibly forming an assessment district
20 over that 136 acres?

21 MR. CARLIN: We haven't had that discussion, but
22 we've -- something about it, I think, that was sent out
23 recently that thought that the whole district should have
24 an assessment. I mean, again, as a landowner, the idea
25 that you don't have enough money to take care of the levee

1 I think is a problem. And we signed in support to
2 establish an assessment district. And I think that's a
3 completely reasonable approach to generate the revenues
4 required to do an adequate maintenance. I think the
5 current budget, when we looked last is -- and Eric, you
6 know, help me out here. But I think there's roughly 10 or
7 12 miles of levee, and the budget's 10 to 12 thousand
8 dollars a year to maintain 10 or 12 miles. That's -- I
9 don't see how that's sustainability.

10 MEMBER RIE: Well, I think for the 136 acres, I
11 mean, that's a pretty good piece of land. You guys, as
12 the property owner, can set up an assessment district, and
13 I think there's just one landowner, and that's River
14 Partners?

15 MR. CARLIN: Right.

16 MEMBER RIE: You are the one vote. You can vote
17 to impose an assessment on your property alone for the
18 purpose of levee maintenance.

19 MR. CARLIN: So are you suggesting that we then --
20 are you suggesting that we do that and set up a payment of
21 our current assessment of the \$1.81?

22 MEMBER RIE: Well, I think it needs to be more
23 than \$1.81.

24 I think the fundamental issue here is they are
25 concerned about interference with maintenance of the levee

1 that runs through the 136 acres, and I think you can
2 probably solve that problem if you impose an assessment on
3 the 136 acres, which you can do. And it's going to be
4 more than \$1.81.

5 MR. CARLIN: So that's -- that would be -- again,
6 we're willing to discuss any alternative that makes sense.
7 I guess we would be reluctant to take our 135 acres and
8 support the maintenance of the 12 -- you know, the
9 12 miles of levee that goes through our property that's in
10 the whole levee district.

11 MEMBER RIE: It doesn't have to be the entire
12 district. It could be just the levee maintenance within
13 the 136 acres.

14 MR. CARLIN: All right. We would be happy to
15 entertain that.

16 MEMBER RIE: And it's a pretty easy process to do.
17 You can do that with Glenn County. They can sponsor the
18 assessment district, and then you go through the public
19 hearing with the Glenn County Board of Supervisors, you
20 have an election, you vote, and there's only one property
21 owner, and it can be done.

22 MR. CARLIN: So that's an idea we haven't thought
23 of, so it's something we could look into.

24 MEMBER RIE: But I think the fundamental issue,
25 every time you come before our Board, is, there's not

1 enough funding for maintenance. The levee district is
2 concerned about the elderberries encroaching on the levee,
3 and the elderberries are going to interfere with their
4 ability to do maintenance. And without new funding, I'm
5 sure -- I don't want to speak for them, but I'm sure they
6 are concerned about how will they continue to maintain the
7 levee on your property without any new funding?

8 I think it's a legitimate concern. And, you know,
9 I'm just a little bit disappointed that we haven't made
10 any progress in the last eight months.

11 MR. CARLIN: The only reply to that, that I can
12 give is, two of the board members were at those meetings.
13 And I think people -- and there's been several other folks
14 in the audience here that have been at those meetings.
15 And we've -- we have not been able to get a clear
16 definition of exactly what it is that Levee District 3
17 would like.

18 And the staff who's been there -- I mean, Jay, you
19 were involved in this to some degree. I think you were
20 asked directly at one point, what could we do that would
21 satisfy Levee 3's demands? I don't think you had a direct
22 and succinct answer for that either; right?

23 So if we know what the goal is, the first time on
24 the first 95 acres, no elderberries until you get a safe
25 harbor agreement, get the safe harbor agreement, come

1 back, no, we don't really like the safe harbor agreement,
2 there's some other problems. So we feel like there's been
3 a moving target and not really defined objections that we
4 can address.

5 And so if we have really clear targets of what
6 specifically it is that we can do to accommodate Levee
7 District 3, you know, we're happy to sit down and work
8 with them on that.

9 MEMBER RIE: And you know, I think it's great that
10 you have so much support from the community and the duck
11 hunters and farmers, and the schoolteachers. But as the
12 Reclamation Board, our condition is levee maintenance.
13 And when Levee District 3 says that they're concerned,
14 we're worried about that.

15 MR. CARLIN: And this becomes difficult because I
16 don't want to be in a position here of judging other
17 folks's efforts.

18 But I think it's important, if you go back and
19 look at the Corps evaluation of where the problems occur
20 on Levee District 3, so -- and I don't remember all the
21 exact details. Dan, maybe you have the -- can reference
22 the Corps evaluation, but they went through and looked at
23 the evaluation. There are all kinds of encroachment on
24 Levee District 3's levees that include, you know, mobile
25 homes that are parked on the side of the levee, right up

1 to the edge, people's yards encroaching into it. There's
2 all these other factors.

3 I mean, if we were a genuine risk, and this
4 particular location was a critical point in the safety of
5 that levee, I completely understand what you are saying.
6 I think if you look at the whole 12 miles of levee and
7 where all the different violations are -- I'm forgetting
8 the term. Help me out.

9 PRESIDENT CARTER: Noncompliance issues.

10 MR. CARLIN: Noncompliance, thank you. Where the
11 noncompliance occurred, it's not along this section --
12 it's not the area through our property, and it's not in
13 areas that the Fish and Wildlife or the other public
14 agencies are maintaining.

15 So I think that's an important part of this
16 discussion. If we're going to paint all public ownership
17 and conservation ownership as lousy stewards of levees, I
18 think, you know, we need to put all the cards on the table
19 and look where these noncompliance issues are occurring.

20 MEMBER RIE: I agree with you. That's an issue.

21 But for you, here today, you're asking us to give
22 you a permit to plant elderberries. And my concern is, if
23 those elderberries get out of control and encroach upon
24 the levee, will Levee District 3 have enough money to go
25 out there and do whatever it is they need to do to take

1 care of the property. So I think it comes back down to
2 money. You know, do they have the money? Where's it
3 going to come from? Is there a solution?

4 Did I misspeak on your behalf?

5 MR. LARRABEE: No.

6 PRESIDENT CARTER: The -- could you maybe
7 enlighten this Board, in 2003, when the Reclamation Board
8 specifically appropriated elderberry plantings on the 96
9 acres, what was the reason?

10 MR. CARLIN: The reason was that there wasn't --
11 there has been an ongoing concern. And I don't know if
12 you would like to add in on that.

13 PRESIDENT CARTER: Mr. Bradley, could you
14 enlighten us, please.

15 CHIEF ENGINEER BRADLEY: Unfortunately, yes. I
16 wrote the permit for that and addressed the issues.

17 The elderberry shrub is not the problem of Fish
18 and Wildlife. The listing is for the elderberry beetle,
19 but the shrub is habitat. So under the Fish and Wildlife
20 guidelines, affecting the habitat also affects the listed
21 species, and so it's protected. And several years ago,
22 Fish and Wildlife was very strict on impacts on
23 elderberries. And so at the time that River Partners came
24 forward with their request, which was in the 2002-2003
25 time frame, what we said is, we didn't have problems with

1 the restoration, but we didn't want the elderberries out
2 there because of the problems of maintaining the area.

3 Fish and Wildlife, in the last several years, has
4 come a long ways in working with the flood control
5 agencies on a lot of matters. And as you can see, where
6 you can take this back to baseline, which means, in this
7 area, remove all elderberry plants except for one, if I
8 remember correctly, in the future, not withstanding Member
9 Brown's comment that somebody may sue us. I mean, I don't
10 think there's anything we can do about that. Anybody can
11 sue us at any time over almost anything.

12 But there is an agreement out there that says that
13 that's what we can do. And I think that that has been a
14 big step forward for the resource agencies, especially
15 Fish and Wildlife. We've got several agreements similar
16 to that. I believe this Board was involved with O'Connor
17 Lakes, the restoration that went on at O'Connor Lakes, up
18 near Shanghai Bend, in which they gave us the same type of
19 situation where we could go back to baseline.

20 So the planting that occurred for DFG, I think, at
21 that time -- I was actually on vacation when that came
22 through. Mr. Fua was fairly new, didn't know all the
23 background at that time. I believe Scott Morgan was also
24 pretty new at that time, didn't understand the background
25 of what had been issued in the permit for the 96 acres,

1 which said no elderberries could be planted.

2 And so under pressure from DWR at the time or at
3 least a request from DWR to be able to do mitigation for
4 some of their work, they agreed to allow the 11 elderberry
5 plants to be planted on this area.

6 I guess that's the background of what has gone on
7 there.

8 Is there anything else I can answer for that?

9 PRESIDENT CARTER: I have question for Mr. Carlin.
10 With regard to the 11 DWR elderberries bushes that we're
11 serving as mitigation for the emergency repair erosion
12 sites, the River Partners or their affiliates, were they
13 compensated for their 11 bushes?

14 MR. CARLIN: At cost.

15 PRESIDENT CARTER: At cost.

16 MR. CARLIN: At cost. So in other words, it's
17 tied in the materials. So the typical way this would
18 occur is, the state would go out and find a mitigation
19 bank, an approved elderberry bank, contract by the square
20 foot to take the elderberries, transplant them in there,
21 and then for every elderberry that gets translated,
22 there's associates. Depending on the time of year, seven
23 to fifteen different associates that go in -- different
24 tree species, oak, willow, cotton. So one elderberry,
25 maybe 15 of these other trees.

1 So you buy -- you would buy those units at a bank.
2 And rather than do that, our feeling was, the State of
3 California had given River Partners the money to buy this
4 property. They had funded the restoration of the
5 property, the habitat restoration. So we had already
6 planted all these associates -- the willows, the cottons,
7 the other species. So what we got paid for was to go dig
8 up the elderberry and put the elderberry in, and that was
9 the only cost that the state had in the process.

10 So they are extremely, I think, happy about the
11 financial arrangements in terms of the costs of the flood
12 control project and just full disclosure. There are
13 negotiations in progress, actually quite ways along in
14 the progress. And they had about another 900 elderberries
15 that they would like to put out on that site.

16 So again, the idea here is that the safe harbor
17 agreement is in place, and this project gets approved,
18 then if anything happens in the future and DWR needs to go
19 back and take out any flood maintenance activities, need
20 to take any of those elderberries out in the future, then
21 that can occur without any additional cost.

22 If this doesn't get approved, then what would
23 happen is, all the elderberries that DWR is transplanting
24 now to this site would then need to be mitigated again if
25 there was future mitigation.

1 MEMBER BURROUGHS: To answer the question, what is
2 the cost for one elderberry?

3 PRESIDENT CARTER: Let's say just the 11 that DWR
4 planted?

5 MR. CARLIN: I don't have that off the top of my
6 head.

7 I would think -- you know, I'm sorry. I don't
8 have that. It was certainly under \$10,000, I'm sure of
9 that. I would have to go look.

10 You have to have a biologist on site. I mean,
11 there's all these regulations associated with moving
12 elderberries.

13 MEMBER BURROUGHS: I still would -- I would still
14 like the question answered. In general, what is the cost
15 associated with removing an elderberry bush and to replant
16 and add to it the 15 associated plants with that? What
17 cost is associated per plant?

18 MR. CARLIN: I'm sorry. I can't not give you an
19 accurate dollar amount for that because there's lots and
20 lots of different factors.

21 MEMBER BURROUGHS: Can you give me a range?

22 MR. CARLIN: I can give you the absolutely best
23 case scenario would probably be -- to move one elderberry
24 plant would be, you know, a couple hundred dollars.

25 And what's happened already on the Levee District

1 3, where there's ground -- where the levee goes through
2 National Wildlife refuge land, you know, the refuge and
3 River Partners have collaborated to go out and dig those
4 elderberries up and move them free of charge.

5 So again, when I started this discussion, I was
6 talking about balance. And I think this is -- we always
7 have the discussion about how all these bad things are
8 going to happen and this is a risk and a detriment to the
9 community and all these sorts of things.

10 One of the reasons we handed out these letters is
11 to show there's actually a lot of positive impacts from
12 these projects and there's a huge number of people in the
13 community that benefit. But I think the most important
14 thing is that there's opportunities here to get some
15 really creative proactive flood protection solutions out
16 there.

17 And I think that's what the O'Connor Lake project
18 demonstrated. Instead of going back and forth on these
19 battles over endangered species, you develop projects
20 where you can be proactive, get all the instruments in
21 place to solve some of these problems, and move forward,
22 and reduce costs of flood protection and enhance wildlife
23 habitat, and ideally at some point in the future, getting
24 the species delisted.

25 MEMBER BURROUGHS: Mr. President, are there any

1 cards from the audience on this subject?

2 PRESIDENT CARTER: Yes, but we're not there yet.

3 MEMBER BURROUGHS: That's fine. I just wanted to
4 know if there were.

5 PRESIDENT CARTER: There are a stack.

6 MEMBER RIE: I have a couple more questions. What
7 is the length of the levee on your property?

8 MR. EFSEAFF: I think if we go back to Mr. Fua's
9 picture here, this section here -- unfortunately, it cuts
10 it off. I think it's about -- and Eric, you can correct
11 me if I'm wrong. It's probably on the order of a thousand
12 feet, maybe -- or no, excuse me, 500 feet. If this is
13 1200 feet wide, then we're talking about a pretty small
14 fraction -- the 27 acres with the line going through it is
15 what we're talking about. So it's actually a very small
16 segment.

17 The entire length of the levee district?

18 MEMBER RIE: No, just on the property.

19 MR. EFSEAFF: Yeah, we're talking about on the
20 order of a few hundred feet. I think it's 500.

21 PRESIDENT CARTER: But it continues going south?

22 MR. EFSEAFF: Absolutely. I believe the question
23 was talking about on our -- oh, adjoining our property,
24 yes, right, it does continue on.

25 MR. LARRABEE: Probably about a half mile.

1 PRESIDENT CARTER: About a half mile?

2 MR. EFSEAFF: But the part that both sides are on
3 our property is probably about 500 feet.

4 MEMBER RIE: Do you know how much money Levee
5 District 3 needs to do annual maintenance for that?

6 MR. EFSEAFF: From the figures we've seen -- and
7 Eric can probably address this better. Their annual
8 budget is on the order of \$12,000 a year, simple math
9 divided by twelve, about a thousand dollars a mile is what
10 that comes out to.

11 PRESIDENT CARTER: That's what they have now.
12 That's not what they need.

13 MR. EFSEAFF: Absolutely. Right. Right.

14 MEMBER RIE: Have you guys had any discussions
15 about what they need to maintain the levee on your
16 property?

17 MR. EFSEAFF: My understanding is, a lot of the
18 levee maintenance is maintained by landowners. They have
19 not had -- no issues with our current maintenance.

20 What we're talking about here is kind of
21 speculating on future maintenance, that the future
22 landowner, Fish and Game, or whoever the agency might be,
23 will be negligent in that and then they won't do that
24 maintenance.

25 But we haven't -- that's why we worked with Fish

1 and Wildlife to work on their levee maintenance, because
2 that's sort of -- if they can do it on their own, it's not
3 costing the district any money. It's just a conversation
4 with them. And then the agency can handle those.

5 MEMBER RIE: As to the future landowner, has Fish
6 and Wildlife or Fish and Game, have they agreed to do the
7 levee maintenance on this property?

8 MR. EFSEAFF: There's a letter that we submitted a
9 few meetings ago from the Department of Fish and Game.
10 Mr. Don Blake, who described their budget, which is over a
11 million dollars, and their staff and their ability to do
12 maintenance up there and willingness to do maintenance.
13 They have levees along Butte Creek that I don't think
14 there's any issues with those out there in the Butte --
15 along Butte Creek.

16 MEMBER RIE: Well, if they choose not to do the
17 maintenance, and it's 500 feet, so what is that, a
18 thousand dollars a year, for this property? I mean, isn't
19 there any way that you can work something out where you
20 give them the money in advance so they have it, so that
21 the maintenance is taken care of, whether or not Fish and
22 Wildlife participates? Doesn't seem like a lot of money.

23 MR. CARLIN: Well, it depends on how many years.
24 So this discussion has come up before. It's in
25 perpetuity. So then what's the amount? And then, you

1 know, you start having discussions about endowments, and
2 then it turns into a lot of money to generate the thousand
3 dollars a year at 5 percent returns, you know, turns into
4 a pretty significant amount of money.

5 MEMBER RIE: Well, let's just say 20 years.
6 That's \$20,000.

7 MR. CARLIN: That discussion has never come up.

8 Again, if we had a clear target from Levee
9 District 3, we would be happy to work with that.

10 MEMBER RIE: Let's say you guys came to an
11 agreement on a dollar figure, would you be willing to work
12 out a deal?

13 MR. CARLIN: If it's reasonable, absolutely. I
14 think what we've tried to demonstrate here in all the
15 previous work we've done is that we're trying to be
16 collaborative and reasonable. And that's, you know, why
17 we're working with Fish and Wildlife to dig up
18 elderberries on the levee and move them free of charge.

19 MEMBER BURROUGHS: That's great.

20 But Mr. President, if I may, I would just like to
21 make a quick comment and then move on with whatever
22 other --

23 PRESIDENT CARTER: Does the applicant have any
24 more new information to share with the Board?

25 MR. CARLIN: No.

1 PRESIDENT CARTER: Okay.

2 SECRETARY DOHERTY: Can I ask a question?

3 PRESIDENT CARTER: Rose Marie may go first.

4 MEMBER BURROUGHS: First of all, many of your
5 comments today are very well taken. We absolutely need to
6 work a better relationship in regards to maintaining
7 levees with flood protection and the environment and
8 restoration. I applaud that. Your Web site is beautiful.
9 The work you have done, to be commended.

10 My comments today are that we have more work to do
11 before I am willing to vote for a positive planting of
12 elderberries. In our report from DWR this morning, on
13 page 6, it said that the Corps had selected, just this
14 year, 133 sites that needed repair work. And then they
15 chose to work on 62 of those 133 sites. They were unable
16 to do that this year because of costs specifically related
17 to the Endangered Species Act. Only seven sites were they
18 able to work on, because of the high costs.

19 So I think we need to do a little bit more work in
20 regards to this safe harbor because our number one
21 concern, and what we have to vote on today is flood
22 safety. And if elderberry bushes, no matter where they
23 are at, near our levee, prohibits the repair work and
24 maintenance, then we are not doing our job and protecting
25 the public.

1 Thank you.

2 PRESIDENT CARTER: Lady Bug?

3 MR. EFSEAFF: I just wanted to comment on one
4 thing. We took -- we have received three of those sites.
5 So in a sense, you could say that our -- this Del Rio
6 project, by its existence, has allowed the mitigation --
7 or the emergency levee repairs to move forward on three
8 out of seven sites.

9 MEMBER BURROUGHS: Again, I will say, positive
10 steps are being taken. They are not enough today. Of 133
11 sites, only 7 were worked on. In my view, that is not
12 acceptable.

13 Thank you.

14 PRESIDENT CARTER: Lady Bug?

15 SECRETARY DOHERTY: Mr. Carlin, you said you were
16 unsure of how much for mitigation. I understand it's
17 \$75,000 an acre. Is that what you are planning on
18 planting? You're planning on planting 1500 elderberries
19 on this site?

20 MR. CARLIN: Yeah. And that's one of the things
21 that has always been difficult for us to understand, you
22 know, from those of us with farming backgrounds. It costs
23 us about, I think, on the top end, 7 or 8 thousand dollars
24 an acre to do restoration. And you go to these mitigation
25 banks, and you end up spending 75, 80 thousand dollars an

1 acre.

2 So when again, when I offered the Department of
3 Water Resources at our cost, and the reason they are
4 interested in planting an additional thousand
5 elderberries, is, this is a significantly lower cost than
6 what's out there on, quote, the open market.

7 And it goes right back to other comments that have
8 been made, is there's only so much money to go around and
9 the dollars that get spent for that don't go here.

10 SECRETARY DOHERTY: Okay. Thank you.

11 PRESIDENT CARTER: I guess that's a message for
12 all the farmers out there in the audience. We should be
13 doing restoration rather than some of the other things
14 we're doing.

15 I have documentation from DWR that says that they
16 spent on the order of \$85,000 an acre for elderberry
17 mitigation for the 33 erosion repair sites that they did a
18 year and a half ago.

19 So that's the figure that they budget today and
20 figure on. So just for the record, I have that
21 documentation.

22 Mr. Bradley?

23 CHIEF ENGINEER BRADLEY: Yeah. I was going to
24 bring it up. I thought that \$200 for transplanting
25 elderberries was a bargain and that we should be able to

1 transplant all that we can for that because our projects,
2 our Rec Board projects, we're paying around \$80,000 an
3 acre for elderberry mitigation, when you have to go buy
4 already mitigated property bank, you know, from a
5 mitigation is about \$80,000 an acre. And it's probably
6 going up. As you have noticed, it was 85 this last time.

7 On regarding maintenance --

8 PRESIDENT CARTER: By the way, that \$85,000
9 includes a payment or an annuity in perpetuity for taking
10 care of the plants. So it's one of the reasons it's high.

11 CHIEF ENGINEER BRADLEY: That's correct.

12 PRESIDENT CARTER: But it's basically a net
13 present value calculation discounted to present day.

14 I'm sorry to interrupt.

15 CHIEF ENGINEER BRADLEY: That's correct. There
16 are some annuities to go along to ensure maintenance over
17 the long term.

18 Regarding maintenance funding, that really is not
19 the Rec Board jurisdictional area, in my understanding.
20 You only provide assurance to the Corps that maintenance
21 will be done. If it is not being done, then you can
22 direct DWR to form a maintenance area, and then
23 maintenance will be done by the state, and everybody
24 receiving benefits from that maintenance will be assessed,
25 at whatever cost to do that maintenance. But you don't

1 ensure that the maintenance area has a sufficient budget.

2 You have no say over their budget.

3 MEMBER RIE: Can you form a maintenance district,
4 or can DWR form a maintenance district if the property
5 owner has federal agencies? Can we force Fish and
6 Wildlife to pay into DWR's maintenance district?

7 CHIEF ENGINEER BRADLEY: I doubt it, because state
8 doesn't trump the federal government. That's a legal
9 question, but I suspect that you cannot -- that means the
10 state would have to fund that out of the general fund.
11 That is not the case here at the moment, though.

12 VICE PRESIDENT HODGKINS: I can shed a little
13 light on that.

14 If you create an assessment district now, under
15 Proposition 218, government agencies have to pay, other
16 than federal agencies, because the state -- I forget the
17 right legal terminology, but the federal government is
18 superior to the state, so we can't -- supremacy. So you
19 can't make the federal government pay, but you can make
20 the state pay.

21 CHIEF ENGINEER BRADLEY: This is also not a 218
22 issue. The state -- at least so far, the state has taken
23 the tack that they are not subject to 218, so the
24 formation of a maintenance area is not subject to 218
25 assessment. You are required to do that and assess the

1 people you receive the benefits from.

2 PRESIDENT CARTER: Ms. Suarez?

3 MEMBER SUAREZ: I just want to piggy back on a
4 comment Mr. Bradley made.

5 If staff can look at the actual incidental take
6 permit from Fish and Wildlife Service, on page 1, section
7 5, specifically it says, flood control -- I want to make
8 sure I understand this. "The incidental take permit
9 includes flood control management activities conducted or
10 authorized by the Department of Water Resources."

11 So DWR is covered under the incidental take
12 permit?

13 MR. CARLIN: And I think the goal was to make it
14 more inclusive; right?

15 CHIEF ENGINEER BRADLEY: Right.

16 And there's also -- I believe there's a letter
17 from Fish and Wildlife clarifying that also covers the
18 Reclamation Board.

19 MEMBER SUAREZ: Well, that's really my key
20 question would be, are there flood control management
21 activities that are conducted by the Reclamation Board
22 that are not included in this phraseology? In other
23 words, would we be covered under the phraseology dealing
24 with activities conducted and authorized by DWR?

25 CHIEF ENGINEER BRADLEY: Well, we -- the Board and

1 the Board staff don't normally do maintenance. I think
2 just to be inclusive, we're the responsible entity for
3 this levee; we're the ones that provide the assurances to
4 the Corps. It would be nice to be covered, although I
5 have no plans of taking my ax out there and chopping down
6 any brush or anything.

7 But, you know, as the main entity that provides
8 assurances, we probably should be covered. I don't think
9 there would be a problem with that.

10 MEMBER SUAREZ: How difficult would it be to amend
11 this permit to get that done?

12 MR. EFSEAFF: My understanding -- and Rick Kuyper
13 is here from Fish and Wildlife. He could address that
14 more authoritatively.

15 But it's a relatively easy action to change the
16 language, especially the overall intent was to have flood
17 control practices out there covered. And so that's why we
18 thought we were covered by saying "DWR." And to add
19 additional agencies, I don't think there's a problem.

20 PRESIDENT CARTER: I think the issue is anybody
21 who's essentially LD3 is one of our agents out there. And
22 the Corps is our partner. All of those need to be named
23 in the safe harbor agreement.

24 MR. EFSEAFF: Yeah, I think that's a pretty
25 trivial -- important but really relatively easy action to

1 follow through on.

2 PRESIDENT CARTER: Okay. All right.

3 Any other questions of the applicant?

4 VICE PRESIDENT HODGKINS: I have a question. We
5 are talking about 12 -- about 1600 elderberries. The 900
6 that DWR is looking to replant, are those in the 1600?

7 MR. EFSEAFF: No. The 900 DWR ones, just to kind
8 of keep this as clean as possible, would go into the 96
9 acres that already have a permit. So we're viewing it as
10 separate issues. They are going to be, you know, separate
11 plants, if you will, that will go into different areas.

12 VICE PRESIDENT HODGKINS: So the 900 are not going
13 onto Del Rio?

14 MR. EFSEAFF: They are going onto Del Rio, but the
15 96 acres that's indicated on the property line here, what
16 we're applying for is elderberry that will go into the 135
17 acres. So that's from other funding sources.

18 PRESIDENT CARTER: I just want to get a
19 clarification there. On the permit that allowed the 11
20 elderberries, was specific to DWR, was specific to
21 emergency erosion repairs as covered by the declared state
22 of emergency by the governor? That's different --

23 MR. EFSEAFF: That's completely different.

24 PRESIDENT CARTER: A different item?

25 MR. EFSEAFF: Correct.

1 PRESIDENT CARTER: And so those -- permission for
2 those have to come back before this Board as well, the
3 900?

4 MR. EFSEAFF: My understanding, the way the permit
5 is written -- and correct me if I'm wrong, but that it's
6 for transplants and mitigation plants. So I think that
7 it's --

8 PRESIDENT CARTER: For DWR, for emergency erosion
9 repairs, as part of the declared state of emergency by the
10 governor?

11 MR. EFSEAFF: In other words, if we're going to
12 separate these out, they are not River Partners
13 elderberries. They are DWR elderberries that have funding
14 from them that will go onto our property.

15 PRESIDENT CARTER: But my point is that those 900
16 are not covered under the permit that was issued for the
17 11?

18 MR. CARLIN: No. I think my understanding is that
19 they are. And what DWR is doing is going back and looking
20 at retroactively addressing the mitigation that has
21 already -- from the damage that has already occurred.

22 So they are looking at this site to go deal with
23 the other -- they could move 11 of the plants and the rest
24 they couldn't move. So those -- the plants that they
25 decided not to move that they just dosed over, that kicks

1 in a whole different level of mitigation. And those are
2 the ones that are going to try and mitigate for on the 95
3 acres.

4 PRESIDENT CARTER: Mr. Fua?

5 SUPERVISING ENGINEER FUA: And the waiver that was
6 approved for in 2006 was specific to that 11 plants. And
7 therefore, if any additional plants will be transferred,
8 it will need another approval.

9 PRESIDENT CARTER: Okay. All right. Very good.

10 I would suggest at this point that it's midday,
11 that we take a recess. When we come back, we will
12 entertain comments from the public. And we're going to
13 start -- I'm doing this in the order received.
14 Mr. Hennelly, Mr. Chamberlain, and Mr. Warner. So we will
15 adjourn for -- recess for lunch.

16 I am showing 12:20 right now. We'll be back here
17 at 1:20, and hopefully those people will be here at that
18 time to address the Board. Then we will go through the
19 rest of the public comment. There are a number of other
20 people that wish to address the Board.

21 Yes, sir?

22 MR. SPANNAGEL: I'm sorry. I'm Mark Spannagel
23 from Assemblyman LaMalfa's office. I will not be able to
24 join you after lunch. I was late for public comment. I
25 will make it very brief --

1 PRESIDENT CARTER: Okay.

2 MR. SPANNAGEL: -- if possible, just a quick
3 statement that he opposes this -- the project and the
4 permit. And I will just leave it at that.

5 PRESIDENT CARTER: Mr. Spannagel, please hold on.
6 We didn't have the attention of the Board.

7 MR. SPANNAGEL: Not a problem. I want to respect
8 your time immensely. I will make it very short.

9 There are numerous people here that will make the
10 points that I had brought up. I addressed the Board last
11 February on this point. We continue that opposition.

12 Thank you very much. We would hope that the Board
13 would not approve this permit with the elderberries.

14 Thank you.

15 MEMBER BROWN: Quickly, why do you oppose it?

16 MR. SPANNAGEL: What's that?

17 MEMBER BROWN: Why do you oppose the project?

18 MR. SPANNAGEL: I'm sorry?

19 MEMBER BROWN: Quickly, why do you oppose the
20 project.

21 MR. SPANNAGEL: There are numerous reasons, many
22 of which you have already partially addressed. One of
23 them also it seems not to have been brought up. The 1997
24 hydrology study, there's actually been a significant
25 degrading of the overflow areas, so much more water is

1 flowing in today, into the Butte Overflow Basin than it
2 was in 1997. The 3B's levee, the Phelan Levee. There are
3 significant issues slightly north of this.

4 There's a great deal more inundation of water in
5 that overflow area. You are going to constrict that
6 additionally, by allowing additional plantings in there.

7 There's the simple other fact that it's a state
8 flood control project here. It's an area that's storing
9 water. Do we really want to put mitigation in areas that
10 is house flood water that's protecting people?

11 The more we mitigate in this area, the harder time
12 we're going to have in the future when it comes back and
13 we need to clear out certain areas. There's numerous
14 issues and additionally, the comments that I made back in
15 February are consistent, because we haven't changed
16 anything on the project.

17 MEMBER BROWN: Thank you.

18 PRESIDENT CARTER: Thank you.

19 MR. SPANNAGEL: I apologize.

20 MEMBER BURROUGHS: That's fine.

21 PRESIDENT CARTER: Thanks for coming forward.

22 Ladies and gentlemen, are recessed until 1:20.

23 (Thereupon a break was taken in
24 proceedings.)

25 PRESIDENT CARTER: Good afternoon, ladies and

1 gentlemen.

2 I would like to reconvene the State Reclamation
3 Board meeting for today. As a reminder, we are discussing
4 Item 8, under applications, application number 17659-A,
5 River Partners, Glenn County.

6 We heard from staff before our lunch break. We
7 heard from the applicant before our lunch break. Now I
8 wanted to open it up to some public comment and at the top
9 of the list on the cards is Mr. Hennelly.

10 Is Mr. Hennelly here?

11 MR. HENNELLY: Mr. President and members of the
12 Board.

13 PRESIDENT CARTER: Good afternoon.

14 MR. HENNELLY: Good afternoon as well.

15 Mark Hennelly with California Outdoor Heritage
16 Alliance also representing California Waterfowl
17 Association. We respect a lot of sportsmen and landowners
18 in the area.

19 I will just be really brief. I mean, we wanted to
20 just reiterate our support for this project. Riparian
21 habitat is an important habitat that's been declining by
22 some 90 percent in California. And we see the project is
23 helping to restore a lot of that important habitat. It
24 will have quite a benefit for a variety of other wildlife
25 species. We would also note that the public opportunities

1 that will be provided would greatly benefit our members as
2 well.

3 So we just would urge your strong support of the
4 project.

5 Thanks.

6 PRESIDENT CARTER: Very good.

7 Any questions for Mr. Hennelly?

8 Very good. Thank you very much, Mr. Hennelly.

9 Mr. Chamberlin?

10 MR. CHAMBERLIN: Good afternoon, President Carter,
11 members of the Board.

12 My name is Jay Chamberlin, deputy assistant
13 secretary with the California Resources Agency. And I
14 also will keep my remarks very brief, and it really boils
15 down to 2 points. First is, thank you. Thank you very
16 much for engaging so intensely on this issue. This permit
17 seems perhaps outsized for its relatively small acreage to
18 the amount of conversation that's consumed. But it's
19 really a testament to your support not only for your
20 vision but to the interest of the private landowners
21 throughout the Central Valley and to other key concerns.

22 My second message, which may take you as something
23 as a surprise, is I want to convey the resources agencies'
24 support for the staff recommendation to approve this
25 permit.

1 I want to spend just a moment saying why that is.
2 I think it was Board Member Burroughs this morning who
3 mentioned the long list of permits and mitigations that
4 are sort of held in abeyance, waiting for -- I'm sorry, a
5 long list of the mitigation opportunities that are sort of
6 held in abeyance, waiting for permits. And I submit to
7 you, that is precisely the reason that permits like this
8 one are extremely important. You -- we heard a little bit
9 of the conversation this morning about the use of safe
10 harbor permits and the relationship with the U.S. Fish and
11 Wildlife Service and how that relationship has matured
12 over time.

13 That is a really essential point to address just
14 the fact that you brought forward. In order to tackle our
15 flood control challenges as we move forward, we're going
16 to need a much larger tool box of tried and true methods,
17 and I believe that a safe harbor permit is one that we
18 want to have in our tool box. And in this particular
19 area, you also heard testimony that it provides a unique
20 opportunity to do just that.

21 One other issue that we've heard about this
22 morning was the issue of the valley elderberry longhorn
23 beetles potential delisting. I think -- it's hard for me
24 to imagine that there's anyone in this room who would look
25 askance at that outcome. And certainly, we see the

1 mitigation opportunities coming forward providing perhaps
2 the opportunity for that delisting.

3 Clearly, not all of the concerns that were raised
4 by the various jurisdictions have been able to be dealt
5 with to the satisfaction of this Board. And many of those
6 concerns are obviously extremely important. Nevertheless,
7 as I reread the staff report, and read this last staff
8 report, I was very impressed at just how far we've come.
9 Many of the concerns that have been raised through the
10 iterations of this permit coming to the Board had, in
11 fact, been dealt with in good faith. Some remain to be
12 seen, but I think the number of documents or supporters,
13 that long list of partners, who have really put their
14 shoulders to the wheel, yourselves included, is in fact a
15 testament to a potential to arrive at good outcomes for
16 hopefully all of those concerns we're moving towards.

17 So I wanted to reiterate our support for the staff
18 recommendation. And thank you very much for each of your
19 commitment to this project.

20 Thank you.

21 PRESIDENT CARTER: Thank you. Any questions for
22 Mr. Chamberlin?

23 I have one. Maybe -- you know, has the safe
24 harbor or an existing safe harbor ever been tested with
25 regard to -- one of our concerns is, even if we do have

1 the safe harbor protection we go out there and take some
2 elderberry, we may be sued, the state may be sued, and all
3 the parties to the safe harbor agreement might be sued.
4 Has it been tested? If somebody brought suit, what are
5 the chances?

6 MR. CHAMBERLIN: I wish I can answer that question
7 for you. Candidly, I do not know.

8 As, I think, most people here know, safe harbor
9 agreements are a relatively new tool, in the tool box, to
10 repeat that cliché. I think someone mentioned there was a
11 representative from the Fish and Wildlife Service here.
12 Hopefully they would be able to address that question.
13 But I think -- so I'm sorry. The short answer is no, I do
14 not.

15 PRESIDENT CARTER: Nancy, did you have something?

16 LEGAL COUNSEL FINCH: Perhaps the representative
17 from the Fish and Wildlife Service can shed some light but
18 over lunch I did look for cases regarding the safe harbor
19 agreements. And the issue has not been litigated in a
20 published case.

21 And the one case dealing with incidental take
22 permits, which I think according to this -- this one case
23 is part of the safe harbor agreement -- it was the law
24 itself that was challenged, not someone who had a safe
25 harbor agreement, that that was challenged. And I will

1 read the case and see if I can have any other insights by
2 the end of the public comment period.

3 PRESIDENT CARTER: Okay. Does -- is there a
4 representative from the Fish and Wildlife Service that can
5 offer something new out there?

6 Okay. Thank you very much.

7 MR. CHAMBERLIN: Thank you.

8 MEMBER SUAREZ: Mr. Chairman, if I may.

9 PRESIDENT CARTER: I'm sorry.

10 MEMBER SUAREZ: Just to clarify, the Fish and
11 Wildlife Service authority to engage in these types of
12 agreement has been tested numerous times, and it has been
13 upheld by federal courts. Usually, when people sue over
14 these little things, they sue the agencies as in violation
15 of the Endangered Species Act, in other words, authorizing
16 an activity that's going to harm or threaten. And in the
17 past, litigation has focused whether or not these safe
18 harbor agreements and incidental take permits, results in
19 an injury to the species. And the courts have said no,
20 they have the authority to engage in these kinds of
21 activities.

22 PRESIDENT CARTER: Okay.

23 Very good. Thank you very much.

24 Mr. Werner?

25 Mr. Werner? Gregg Werner?

1 Okay. Mr. Larabee?

2 Just so you all can kind of get prepared, the
3 cards that I have here are Mr. Ellis, Ms. Indrieri, and
4 Ms. Davis.

5 MR. LARRABEE: Good afternoon. Eric Larrabee.

6 I will be brief. I mean, we've been discussing
7 this issue now. I've been here discussing these issues
8 since 2003 when this project first came before us as an
9 opportunity to comment.

10 Our issues, as always have been with this, are
11 money and maintenance. I speak -- I hope I can candidly,
12 that money talks here, folks. I brought you today two
13 letters from Glenn County Supervisors, one just recently,
14 two weeks ago; and then one a year prior to where they
15 addressed the issue of these in lieu monies coming back to
16 the county. And the fact of the matter is, they do not.
17 The State Fish and Game agencies openly refuse to pay
18 them. And the federally owned properties pay little, if
19 any, possibly 50 percent. But as of late, I don't think
20 any of that money is coming in either.

21 In Glenn County, we have tens of thousands of
22 acres now, probably over 10,000 acres alone in Levee
23 District 3's boundary, that have converted to either
24 federal, state agencies and are not paying any property
25 tax revenues of any kind into the general fund.

1 Before lunch, we were talking about Levee District
2 3's amount it would receive from this specific property.
3 And whether it's a \$1.80 or I calculated around \$5 for
4 this parcel, it's all based on the sale of the properties.
5 It's a 1 percent general fund money, so we understand
6 this. It goes into the general fund. Those monies are
7 used to service schools, safety, fire, roads, all that
8 other stuff. And then there is an allocation that comes
9 back out of that to the specific districts, which we are
10 one of them, and as that total pie shrinks, so does ours.

11 We have received, in the past, 22 to 25 thousand
12 dollars, probably, in property tax revenues, and those are
13 now beginning to shrink, because of the situation, down,
14 to approximately \$20,000 annually.

15 And as far as spending money, it is true that we
16 built up a reserve. We've been building a reserve for
17 quite some time. We've had good corporation with most,
18 all, our landowners. These are not the only people we
19 talked to. We talked to many in the summer. We've done
20 quite a bit of work.

21 This fiscal year alone, to address these levee
22 issues -- maintenance issues, we've spent already, since
23 July, \$32,000, a year and a half worth of our money
24 one-year assessment, and we have probably 10 to 15 more to
25 finish out the year.

1 We have started actively clearing some of the
2 areas and addressing the specific parts that are -- that
3 DWR puts on our survey report, where these encroachment
4 issues exist. And we're done spending that amount of
5 money only from Butte City, north, which isn't even half
6 the levee, and we have full intentions, starting next
7 spring, once we are past flood season, of going south, and
8 we probably will spend at least that much money again. So
9 the tab is mounting.

10 And it is unfair -- and I have said this before.
11 It is unfair for the existing property owners within the
12 district to continue to shoulder the burden for those that
13 are not paying.

14 I would -- as a private property owner, I mean, we
15 have letters from Fish and Wildlife, Fish and Game, saying
16 how they agree to do maintenance, they will do this. I
17 will say that working with Kevin Forester -- how we've got
18 to know him; I don't know if it was through these people
19 or not, but it all has to do with the Butte City causeway
20 for those of you who came up for that that day -- has made
21 some progress and he was able to do some things and make
22 things happen. But they did it at their expense. The
23 applicants didn't spend any money to do that.

24 But he was unable and he called to tell me this,
25 and I was talking to him, thanking him for some of the

1 work that was done, he was unable to do anything about the
2 elderberry that were growing underneath the causeway,
3 which get denser and denser, which will go impede this
4 flow. And this just tells me the bigger issue with having
5 these plants around, and they cost money.

6 As far as maintenance goes, the elderberry, if you
7 will -- I mean, Mr. Brown, you asked about if there are
8 any pests known to agriculture that may exist in these
9 plants. I don't know of any. There may perhaps be some
10 beneficials. I don't know.

11 But if you look at this plant and say it's a
12 radiating beacon of bureaucracy and red tape, this thing
13 becomes established on the landowner's field. I mean, you
14 are -- you cannot do anything legally to remove that plant
15 as it is now and things that grow around it. And we have
16 threatened. We've had letters from governmental agencies
17 in the past when we've tried to do maintenance around some
18 of these areas specifically on our levee. And that is
19 what troubles me with this safe harbor permit in allowing
20 more of these plants to be planted.

21 This whole thing started off with them 11 plants a
22 couple of years ago. If you read in here, it doesn't say
23 plant 1500. It says, "Plant more than 1500," and that is
24 only specific to the 136 acres. And now, today, we have
25 900 more. I mean, we're up to 2400. And it grows and it

1 grows and it grows.

2 All of those -- many of those agencies that were
3 on the screen that would be authorized to take these
4 things are already federal agencies. And if they would go
5 through their avenues, they don't need a safe harbor
6 agreement to remove the elderberry. They can do it
7 anyway. The issue with that is, is because if there's a
8 neighboring landowner that has these plants, he would be
9 asked to sign this agreement. And if you read it in here,
10 as you probably have, it's a 20-year agreement. And it
11 doesn't say anything about what happens if this thing
12 becomes delisted.

13 As far as fighting flood and balancing that
14 between the benefit of having more elderberries planted
15 along the levee, I would say that the flood fight issue
16 much outweighs the benefit of having more of these plants.
17 And what also troubles me about having these here is, what
18 happens when you go outside Levee District 3's boundaries?
19 We have no authority to go beyond that.

20 And what I see happening here is, places up and
21 down the Sacramento River, the San Joaquin area, in the
22 delta, a contractor who has homes behind a levee that
23 needs maintenance is addressing those types of issues and
24 those plants being transferred into our county, and Glenn
25 County and Levee District 3 shouldering the burden for

1 this mitigation. And we are unwilling to do that. This
2 is a much bigger issue than that. And this will only
3 complicate our ability to maintain our levee. And that's
4 all we can do.

5 And so for that -- and I want to be clear and on
6 record saying, I don't oppose the permit. But I ask that
7 if you do choose to grant the permit that you add these
8 conditions: No. 1, that you remain consistent and that no
9 planting of elderberry be incorporated into this permit,
10 period; and you put back in Item 39, which was in the
11 prior Board packet in February. And our county
12 supervisors have addressed that also in that letter, to be
13 some kind of a plan to pay these property taxes in
14 perpetuity.

15 Thank you.

16 PRESIDENT CARTER: Thank you.

17 Any questions for Mr. Larrabee?

18 SECRETARY DOHERTY: I have a question for you,
19 Mr. Larrabee.

20 There were some elderberry bushes projected out
21 over the bridge, and we went in underneath there to look
22 at that one time, and I think that's Fish and Game
23 property; isn't it?

24 MR. LARRABEE: Fish and Wildlife.

25 SECRETARY DOHERTY: What was instrumental in

1 finally getting some of that stuff cleaned away?

2 MR. LARRABEE: Well, through numerous discussions
3 and Senator Aanestad's office -- Kim Davis is here today.
4 She can probably tell you a little bit. We had a tour out
5 there. The letter, the first letter, from our supervisors
6 in November of '06 was after that.

7 CalTrans has the maintenance easement to go
8 through there, and they were the ones who came in and
9 cleared the brush and debris; everything but for the
10 elderberry.

11 SECRETARY DOHERTY: Okay. Thank you.

12 PRESIDENT CARTER: So they did not touch the
13 elderberry then?

14 MR. LARRABEE: No.

15 Any other questions?

16 MEMBER BURROUGHS: Do you know what the cost would
17 have been to remove that elderberry?

18 MR. LARRABEE: Under the causeway?

19 MEMBER BURROUGHS: Umm-hmm.

20 MR. LARRABEE: If I had to do it, I would probably
21 hire one of my guys to get a chopper and spend about two
22 hours in there and have it chopped to the ground. What
23 would that cost? It depends, if someone else -- and there
24 are other issues involved. But probably a lot more
25 involved in mitigation. I don't know what that costs.

1 But I know there are more and they escalate very fast.

2 PRESIDENT CARTER: Mr. Brown?

3 MEMBER BROWN: This is kind of a moot question
4 now, I guess, but is this ground suitable and economically
5 feasible for production -- for agricultural?

6 MR. LARRABEE: Yes. And it's very simple. It's
7 class one soil. It was an almond orchard beforehand. The
8 ground had gone -- the walnuts were on half of it as well.
9 It's very productive soil. Actually, I wrote it down. I
10 don't have it with me. The USDA office, they have gone
11 and classified the suitability. And this was the highest
12 priority ground. It's irrigable, grows high value crops.

13 MEMBER BROWN: Class one soil?

14 MR. LARRABEE: Class one soil, yes, sir.

15 PRESIDENT CARTER: It ought to grow good
16 elderberries then.

17 MEMBER BROWN: It almost begs the question, how
18 did it ever get pointed in the direction of running out of
19 production agricultural?

20 MR. LARRABEE: You know, the land -- the prior
21 land owner -- I'm speculating, but he had some financial
22 issues, and I know he wanted a lot of money for this
23 parcel, and there were people willing to pay the price,
24 much higher than what a traditional farmer would be
25 willing to pay.

1 I'm told the price is probably in excess of \$7,000
2 an acre for an old nonproductive orchard. And that in
3 itself is equivalent to property taxes of 15, 17 thousand
4 dollars a year in the general fund.

5 And then you would add on top any type of
6 improvements, things like that, orchards -- for those of
7 you, orchards are expensive. They have irrigation wells,
8 much like they are building on these properties. I was
9 told by the applicant, when we did our tour that they were
10 spending about \$5,000 an acre to restore some property
11 down there on the U.S. Fish and Wildlife Service.

12 MEMBER BROWN: Thank you.

13 PRESIDENT CARTER: Any other questions for
14 Mr. Larrabee?

15 Thank you very much.

16 Mr. Werner, we called you. You were out.

17 Do you still wish to address the Board?

18 MR. WERNER: Yes, Mr. President and Board Members.
19 I apologize. There were a group of about eight of us out
20 there, and the door was evidently locked. So we weren't
21 able to get in for about ten minutes.

22 I am the project director for the Nature
23 Conservancy for the Sacramento River. And I had the
24 opportunity to follow this project through the various
25 stages, and we're very familiar with the site. I would

1 just like to add a few observations.

2 In terms of the project, it seems like, in front
3 of your board are really two big questions. One, how does
4 the restoration affect flood control? And two, what are
5 the effects of elderberries on flood control, on
6 neighbors, etc.?

7 I think in terms of the restoration, all of the
8 experts seem to be in complete agreement that it's not an
9 issue in terms of flood flows and flood control, that you
10 have got a situation where the velocity is so low that the
11 change in roughness of the vegetation is so low that it
12 just won't have any discernible effect.

13 I think in terms of the elderberry, the big
14 question seems to be how does it affect the levee
15 maintenance agencies and neighbors? I think if you look
16 at the programmatic safe harbor agreement, it offers to
17 the levee maintenance agency -- and I know River Partners
18 has said they are comfortable with the condition, that
19 would apply it to DWR, to the Rec Board, to the Corps, to
20 the levee district, giving them the complete ability to
21 remove any elderberries that might be added.

22 So I think in terms of the levee district, the
23 programmatic safe harbor really does give them some major
24 flexibility and assurance. I think in terms of the
25 neighbors, as Mr. Carlin has indicated, they expressed

1 support for the project. But also, they also have that
2 ability, should they wish to, to join the programmatic
3 safe harbor, frankly, at no jeopardy to them and eliminate
4 any elderberries.

5 But I think as a practical matter, on agricultural
6 fields, elderberries don't just pop up. Fields that are
7 maintained and plowed, elderberries just don't get
8 started, because it takes a substantial time for them to
9 get to 1-inch diameter stem.

10 I think also I would strongly agree with
11 Mr. Efseaff to Mr. Brown's question about are
12 elderberries, do they harbor agricultural pests? We're
13 actually just finishing a major project, working with UC
14 Extension, with county ag commissioners, and looked at
15 what are the pest effects adjacent to restoration. And it
16 seems pretty clear that elderberries don't harbor codling
17 moths or any of the other problem agricultural pests.

18 I think also, as noted, that there are thousands,
19 thousands, and thousands of elderberries in the area to
20 the north, to the west, of this site. And so it's not as
21 if something new is being added to the area. To the
22 degree that there's a recruitment in seed source, it's
23 already there, and this really doesn't change that in any
24 substantial manner, and any change is very minuscule.

25 I think what's really important is that this does

1 help move towards the time when the elderberry will
2 hopefully be delisted, and the issues that arise relative
3 to flood control projects and levee maintenance will go
4 away. And I think one of the big keys to that delisting
5 is the existence of and the expectation of a substantial
6 elderberry population and the growing population along the
7 river.

8 I think another major point is that, as was noted,
9 there's a potential here for DWR to enjoy mitigation for
10 elderberries on other sites at perhaps one-tenth the cost
11 of mitigation banks. It's something that Partners has
12 done at cost and I think is exceedingly cost effective for
13 DWR or for levee districts.

14 So I think there's a major advantage there. I
15 think in summary, it seems that the project meets all the
16 technical standards and meets all the legal standards for
17 your issuance of a permit, and it seems like it's a
18 benefit to flood control and a benefit to the environment
19 and really has some very positive things to go with it.

20 Thank you.

21 PRESIDENT CARTER: Thank you, Mr. Werner.

22 Any questions for Mr. Werner?

23 Thank you very much.

24 MEMBER BROWN: The tax issue -- Mr. Werner?

25 Mr. Larrabee had two page issues -- the elderberry

1 plant, but the other one was the property tax into
2 perpetuity.

3 Do you have any suggestion or ideas on that?

4 MR. WERNER: That's a tough one. I think, like
5 almost everybody here, I wish there were a provision that
6 would be enacted in the state and federal law that would
7 require that taxes be paid for those properties. I think
8 it's a tough one. You know, I think the question though
9 is, how do you deal with that? Is that something the Rec
10 Board can deal with, or is it something the legislature
11 needs to deal with?

12 And I certainly agree, there's a problem and it
13 needs to be addressed. I think the question just is
14 whether or not this is the venue that it can be
15 appropriately addressed.

16 MEMBER BROWN: Thank you.

17 PRESIDENT CARTER: It's a little bit -- regarding
18 that issue, it's a little bit ironic that the state pays
19 for elderberry mitigation and includes a net present value
20 calculation for care of those plants in perpetuity. And
21 yet, we're discussing how we can get money to maintain the
22 levee in perpetuity on the flip side of the coin. And
23 nobody seems to have an answer for that.

24 MR. WERNER: I think what Mr. Carlin suggested
25 was, there's evidently a movement to increase the levee on

1 properties in the area. And I think to have that
2 situation where everybody's paying their fair and equal
3 share would certainly seem to make sense.

4 PRESIDENT CARTER: Thank you. Any other
5 questions?

6 Mr. Ellis?

7 MR. ELLIS: President Carter and members of the
8 Board, I am Tom Ellis, a landowner in the Colusa Basin,
9 south of the subject area.

10 But our problems are very similar, and I'm very
11 concerned about allowing the planting of elderberries in
12 floodways, period. That's a big concern of mine. I live
13 and I work in this area. I make my livelihood out of it.

14 So the -- we have to live with the ramifications
15 of these kinds of actions. So it's very real for us. And
16 allowing the planting of elderberries on the floodway just
17 creates a nightmare for the maintaining agencies. And I
18 totally sympathize with Mr. Larrabee and his concerns.

19 It attracts the endangered species to the
20 facilities and that, in turn, seriously limits the
21 maintenance that you can do or your maintenance at this
22 times.

23 And I was interested this morning, we were talking
24 at 1500 elderberry plants, and then for each elderberry
25 plant, we have to plant some other trees around it. You

1 take 50 -- 1500 of those plants and then multiply that by
2 the number, the area, with the rest of these trees around
3 here and all of a sudden I think you've got a pretty good
4 forest going.

5 And I'm also very concerned about the talking
6 about adjusting your permits to accommodate certain
7 things. I am really skeptical of this. We live near the
8 Sutter Wildlife Refuge, which is in the Sutter Bypass, the
9 U.S. Fish and Wildlife Service facility.

10 And going back to 1919 and various years after
11 that, up until about the early '40s, there are flowage
12 easements that were developed in that area. They are very
13 stringent, very stringent, in what's allowed in there.
14 And these easements have been totally ignored and we have
15 what's very close to a jungle in there. You can't hardly
16 walk through portions of it.

17 And so I don't think your record's very good on
18 enforcing these -- you know, the fine tuning of these
19 things, let alone the overall effect of such things as
20 those flowage easements.

21 So I would be very careful in fine tuning these
22 agreements. I think you would find it's hard to enforce.
23 And besides, they are elderberry bushes everywhere. Why
24 do we need more planted in a floodway? I find that
25 incredible.

1 Therefore, when you vote today, if you do vote
2 today, I want you to put yourselves in Eric Larrabee's
3 shoes and just consider what he has to deal with when --
4 if you allow those elderberry bushes to be planted. And
5 so I would ask you to not allow those elderberry bushes to
6 be planted.

7 Thank you.

8 PRESIDENT CARTER: Thank you. Any questions for
9 Mr. Ellis?

10 Thank you very much. Ms. Indrieri?

11 MS. INDRIERI: Well, my original comment said
12 "good morning," so now I will change those to good
13 afternoon.

14 I am Ashley Indrieri. I am the executive director
15 of Family Water Alliance. We are a nonprofit grassroots
16 organization in the area. We advocate for flood control,
17 sustainability of agricultural, water rights, and private
18 property rights for rural ag communities in our state.

19 We have opposed this project from the beginning.
20 There seems to be a list of people that support the
21 project, but there's also a list of people who oppose this
22 project.

23 We just got done, or the state just got done
24 cleaning out the Tisdale Bypass at a cost of \$4.5 million
25 to taxpayers. It seems counterproductive to then plant in

1 a natural overflow area.

2 In many public forums, at water meetings, at
3 different meetings throughout the north state, it has been
4 said that the Reclamation Board does not allow the
5 planting of elderberries. I think that sets a precedence
6 in voting otherwise today, which would maybe open the
7 flood gates.

8 There are eight projects at Colusa that they are
9 planning on restoring right now, just downstream from this
10 project. The Nature Conservancy -- Gregg Werner is very
11 familiar with it. He's doing the planting on them. He
12 does not know if elderberry can be planted at those
13 projects. But I think if just upstream from them, they
14 were allowed to, why downstream would they not be allowed
15 to?

16 I think I echo Tom Ellis's comments, why do we
17 need more elderberries? I mean, the number has just
18 gotten atrocious. They are everywhere, and they are a
19 problem. And so planting more is just going to add to
20 that problem.

21 I urge you to deny the permit today.

22 PRESIDENT CARTER: Thank you.

23 Any questions for Ms. Indrieri?

24 Thank you very much.

25 Ms. Davis?

1 MR. DAVIS: Good afternoon. My name is Kim Davis.
2 And I am here on behalf of the Senator Sam Aanestad. Most
3 of what I was going to say has been stated by Tom Ellis,
4 Eric Larrabee, and Ashley Indrieri.

5 The senator's -- we've spent millions of dollars
6 trying to fix our flood control system. It went into a
7 disarray for many, many years. And he's very, very
8 concerned that we don't go back to that again. We've just
9 spent, as Ashley said, millions of dollars cleaning out
10 the Tisdale Bypass and, like she said, to turn around and
11 replant in another section of the flood control system
12 just doesn't make sense, when we're in this mode of trying
13 to get our system back to design capacity.

14 Earlier today, they talked about the hydraulic
15 model. And I don't know if I misunderstood if they said
16 it was done on capacity flows. That's in normal years.
17 We don't always have normal years. We've had 100-year
18 floods frequently. So what is the flow capacity when we
19 have these large flood events? That is where the model
20 should be to find out what impact it's going to have.

21 The amount of vegetation that will take place
22 based on the amount of elderberries as well as the other
23 mixed plantings, on 136 acres it's going to be pretty
24 dense in there.

25 And I guess the final thing is, you've got Llano

1 Seco next door, 14,000 acres, a refuge, 68,000 acres full
2 of elderberry, full of restoration. It just doesn't make
3 sense that you need to take 136 acres and add more to it,
4 when that 136 acres is in a flood control overflow
5 structure.

6 So I guess the necessity of this is the question.
7 Does it really have to be done? If there's been this much
8 months and months and months of staff working on it and
9 people coming to meetings and discussing it, if there is
10 that much restoration all the way around this project, why
11 is it really necessary to even do it, when there is really
12 a concern of the flood impact, and we don't know in the
13 future what that's going to hold, not to mention the
14 regulatory problems it causes when you plant elderberry.

15 So at this point, I guess, I just want to say, I
16 just don't know if it would be beneficial, or the senator
17 doesn't think it would be beneficial to postpone the
18 decision. We ask that you vote today and we ask that you
19 please deny the permit.

20 Thank you.

21 PRESIDENT CARTER: Thank you.

22 Any questions for Ms. Davis?

23 Okay. Thank you very much.

24 Those are all the cards I have for this particular
25 item.

1 So what is the pleasure of the Board at this
2 point?

3 Does staff have any additional thoughts,
4 recommendations?

5 MEMBER SUAREZ: Mr. Chairman?

6 PRESIDENT CARTER: Yes.

7 MEMBER SUAREZ: I move that we adopt the permit.

8 PRESIDENT CARTER: You move that we adopt -- grant
9 the permit --

10 MEMBER SUAREZ: Right.

11 PRESIDENT CARTER: -- per the staff
12 recommendation?

13 MEMBER SUAREZ: Right.

14 PRESIDENT CARTER: Okay. So we have a motion.

15 Is there a second? Okay.

16 So the motion fails due to lack of second.

17 SECRETARY DOHERTY: I'd like to make a motion that
18 mixed riparian forest, woodland, no valley oaks savanna,
19 and grasslands be planted, but only elderberries as
20 mitigation for and from Glenn County and not from other
21 areas and subject to the conditions listed.

22 PRESIDENT CARTER: So your motion is to allow the
23 restoration to occur with the limitation on elderberries
24 to be for mitigation for Glenn County only, and all the
25 other staff recommendations apply?

1 SECRETARY DOHERTY: No oaks.

2 PRESIDENT CARTER: And no oaks.

3 So we have a motion. Is there a second?

4 VICE PRESIDENT HODGKINS: Can I get a better
5 understanding? The application is for 1600 elderberries.

6 PRESIDENT CARTER: 1500, actually.

7 VICE PRESIDENT HODGKINS: 1500.

8 Are you reducing that to just the number of
9 elderberries that are required to mitigate for --

10 SECRETARY DOHERTY: -- Glenn County.

11 VICE PRESIDENT HODGKINS: -- Glenn County flood
12 control?

13 SECRETARY DOHERTY: Correct.

14 VICE PRESIDENT HODGKINS: Okay.

15 MEMBER BROWN: Do you have an idea what that is?

16 SECRETARY DOHERTY: No. But when it occurs, they
17 have someplace to put them.

18 MEMBER BROWN: And no plantings until there's
19 requirement within Glenn County for mitigation?

20 SECRETARY DOHERTY: Correct.

21 PRESIDENT CARTER: Does everybody understand the
22 motion? Is there a second?

23 Okay.

24 The motion dies for lack of a second.

25 Anybody else care to try their hand?

1 MEMBER RIE: I think we need to have a little bit
2 more discussion.

3 PRESIDENT CARTER: That would be fine.

4 MEMBER RIE: If River Partners could come back up.

5 One of the issues that keeps coming up, and I
6 think your Levee District 3 said it is the financial
7 impacts of turning this into an elderberry preserve, there
8 are financial impacts to Glenn County. And I was just
9 taking a look at your notice of exemption. Apparently,
10 the CEQA document was a categorical exemption, which
11 indicates that there were no impacts, but I really think
12 there are impacts; there are financial impacts to that
13 county.

14 And I think we need to hear from you, what you're
15 willing to do to help address some of those impacts. I
16 think that's really key here.

17 MR. CARLIN: The -- we're happy to have that
18 conversation.

19 The only -- I guess the only challenge I would --
20 the only comment I would make is that it's a really
21 lengthy discussion, because what we've been focusing on
22 this whole time is all the negative impacts. And that's
23 not to say that's ignoring all the positive attributes.
24 And that was one of the reasons we brought those letters
25 from the 40 folks in the community that support it. The

1 40 people in your packet that wrote letters of support,
2 they are not supporting this because they want to have a
3 negative impact in the local community; they think these
4 projects have a positive impact.

5 And so, really, the challenge here, you know, is
6 you take, quote, class one ag ground out of production.
7 Well, part of that is missing, and when we originally
8 bought this property, the last three owners that owned
9 this property went bankrupt -- or not bankrupt, but we had
10 a letter saying they didn't think it was economically
11 feasible. So you may have really high quality ground, but
12 if it floods every couple of years and have huge damages
13 to your orchard and repair costs, it's expensive to farm.

14 So then what do you do? You can pay, continually
15 pay, emergency flood payments when people, you know, try
16 and have ag opportunity -- ag operations. The second
17 thing is, tourism, hunting, educational values. So what's
18 the value to the local schools? We heard about the taxes
19 taking money away. The letters you have are from schools.
20 If the schools are so unhappy and feel that this project,
21 you know, is depriving them of tax dollars, why are there
22 six or seven letters from educators in there saying,
23 "Here's a great outdoor classroom that's going to enrich
24 the lives of people in this community, kids in this
25 community"?

1 MEMBER RIE: Let me interrupt you. Funding for
2 elementary schools comes from the state of California. It
3 doesn't come directly from Glenn County. And I think that
4 Glenn County is the party who's impacted here. And while,
5 you know, I agree with you that it's great that the school
6 kids can go out there and there's recreational
7 opportunities, we can't ignore the impacts to the local
8 government or to the reclamation district.

9 So I'm trying to see if there's anything we can do
10 to mitigate that impact. Our Board can impose a
11 condition -- we can impose any reasonable condition that
12 we think will mitigate the impacts of issuing this permit.
13 So we can potentially address this with a condition.

14 So I'm trying to get a sense from you, is there
15 something that you guys can do to mitigate that impact of
16 the financial loss to Glenn County, specifically?

17 MR. CARLIN: I think we've done our best to
18 mitigate that in terms of, we have paid property taxes
19 voluntarily on this property, and we will continue to do
20 so as long as we own it.

21 When it transitions to a state or federal agency,
22 as a nonprofit, we can't set policy for the Fish and
23 Wildlife Service, Department of Fish and Game, or State
24 Parks. And I think if we try and put some -- basically,
25 what will happen is, if the Board decides to put a

1 condition that says, you know, we need to make some kind
2 of a payment or there's some kind of deed restriction that
3 says we have to make a payment, if the property transfers
4 to a state or public agency, then, in effect, you have
5 taken away our right to give that property to the state or
6 the federal government because they won't accept deeds
7 that are restricted like that. They won't take on some
8 kind of burden because it has huge implications across all
9 the refuge plants in the state, all the wildlife areas in
10 the state, all the state parks.

11 I appreciate the problem. And I think every
12 single speaker that's come up here has said, "This is a
13 real problem."

14 I guess what I would ask you to do is to look at
15 your permit and what we're requesting and answer the
16 question, is it fair and equitable that people that are
17 doing habitat restoration work shoulder this burden on
18 their own? And I think that's really the question is,
19 it's not if it's right or wrong, good or bad. It's, is
20 this being fairly applied to all the applicants that come
21 before you?

22 LEGAL COUNSEL FINCH: And Teri, I would like to
23 interject something that even though the Board can require
24 reasonable conditions, the Board doesn't have the
25 authority to tax unless -- and so if a requirement cannot

1 be a tax or appear to be a tax, so that is something
2 that's to consider when asking for some sort of financial
3 requirement.

4 MEMBER RIE: Thank you.

5 MEMBER BROWN: Mr. Chairman?

6 PRESIDENT CARTER: Yes, sir.

7 MEMBER BROWN: I agree. The tax issue is beyond
8 the responsibility and authority of the Board.

9 In order to keep the project moving, what if we
10 made a motion to go ahead and grant the permit but
11 restricting or eliminating the elderberry. And at some
12 point in time, if we find it necessary or more appropriate
13 to support the elderberry, addressing the concerns that
14 we've heard here today, come back to this Board for
15 consideration?

16 MR. CARLIN: We would be willing to accept that
17 condition. Basically that was the same condition that
18 occurred on the last permit that was offered here.

19 I guess, again, just one last time, I think you're
20 foregoing on opportunity to have really cost effective
21 mitigation take place here that would save taxpayers
22 dollars, that really are taking flood protection dollars
23 out of on-the-ground flood protection because that, in
24 turn, would be paid for mitigation which could occur here.

25 MEMBER BROWN: I understand that. But even though

1 your channel width in this area is 3 or 4 miles wide, the
2 idea of planting elderberries in the interim channel, or
3 drainage-way, it's hard for Colusa engineers to
4 understand. But I understand what --

5 MR. CARLIN: One other last little point of
6 clarification. All the property to the north Llano Seco
7 Ranch, of the 14,000 acres, most of that is in the
8 floodway. All the publicly owned property that has the
9 elderberries planted in it is in the floodway. So I don't
10 think if that's been kind of mischaracterized, but all
11 these areas that we're talking about that are national
12 wildlife refuges and state wildlife areas, they are in the
13 floodway and that's where the elderberries are already
14 growing. So this isn't some additional, new, big detail.
15 It's consistent with --

16 MEMBER BROWN: I understand your argument. You
17 have been very clear.

18 PRESIDENT CARTER: Those elderberries are native.
19 They are not cultivated as you are proposing; is that
20 correct?

21 MR. CARLIN: No. There's a mix. We planted -- as
22 you know, the Fish and Wildlife Service is out of the
23 purview of state regulations. So we have had several
24 restoration projects on Llano Seco directly upstream,
25 where we planted elderberries, and we just completed the

1 Drumheller Slough property, which is a couple miles away,
2 inside the levee, next to the river, where we planted a
3 thousand, two thousand elderberries in there.

4 So this is -- it's an ongoing activity that's
5 occurring in the area.

6 PRESIDENT CARTER: Okay.

7 MEMBER BROWN: If I may continue?

8 PRESIDENT CARTER: Yes.

9 MEMBER BROWN: If we were to go ahead and grant
10 the permit, restricting the elderberry, and again the
11 taxes is not an issue that we're prepared or responsible
12 to address at this point, I wonder if Mr. Ellis or
13 Ms. Davis, if we were to grant the permit without the
14 elderberries, would that make it a little bit more
15 acceptable to the farming community?

16 MR. DAVIS: It would --

17 PRESIDENT CARTER: For the record, please approach
18 the podium.

19 MR. DAVIS: The overall concern that the senator
20 has is that we are trying to clean up the flood control
21 system back to baseline capacity. And at any point, if
22 it's in the flood control structure, which is this
23 overflow area -- it's not just the basin, it's part of the
24 structure -- to plant vegetation in there just seems to be
25 counterproductive.

1 MEMBER BROWN: Okay. Thank you.

2 And Mr. Ellis, would that satisfy you for the time
3 being, and then if at some point in the future that we
4 felt there was some need for mitigation purposes that
5 might benefit your county or others or to plant this and
6 then have to come back to this Board for consideration and
7 justification.

8 MR. ELLIS: I'm against this elderberry planting
9 at any time, as long as it's either the endangered species
10 level or the threatened species level. It makes no
11 difference to me. I think it's a problem, if you plant
12 those things, at any time.

13 Leaving them out of the equation is very helpful.
14 But I will tell you also, though, that vegetative growth,
15 trees and everything, in a floodway is problematic. But
16 when you do the elderberries in that mix, it really makes
17 it bad. And I would like to then in turn ask Eric
18 Larrabee what he thinks about it. I've got some pretty
19 definite thoughts about vegetation in floodways.

20 MEMBER BROWN: And you expressed it very clearly.
21 And I think this Board agrees with you on that, for the
22 most part.

23 And I think that to the extent, Mr. Chairman, if
24 you would like a motion, I will try to make one and see if
25 we get a second on it.

1 PRESIDENT CARTER: Shoot.

2 MEMBER BROWN: That we go ahead and grant the
3 permit as requested but without the authority to plant the
4 elderberry on those lands, with the thought being that, at
5 some point in time, we would be receptive to
6 reconsideration with better, more information at that
7 point in time.

8 So I will make that a motion that we go ahead and
9 grant the permit excluding the elderberry plantings at
10 this time.

11 PRESIDENT CARTER: Okay. Is there a second for
12 that motion?

13 MEMBER SUAREZ: If Mr. Brown would consider my --
14 what I would ask, though, is, I am still concerned and
15 would want to make sure that the permit include a
16 condition that we -- add it to the incidental take permit,
17 both the Reclamation Board and local district.

18 So if we ever get to a point where we have to deal
19 with DSA for maintenance purposes, it would be part of
20 that. Now, my understanding is that won't be that big of
21 a deal for the applicant.

22 MEMBER BROWN: You would make that part of an
23 amendment to my motion?

24 MEMBER SUAREZ: Yes, sir.

25 SECRETARY DOHERTY: I accept that, Mr. Chairman.

1 PRESIDENT CARTER: Which is the staff
2 recommendation; isn't it?

3 SUPERVISING ENGINEER FUA: Yes.

4 MEMBER SUAREZ: Not quite. If you look at your --
5 the write-up, that's not how it reads.

6 SUPERVISING ENGINEER FUA: Yeah, that's what I
7 said. My write-up was amended by my presentation.

8 PRESIDENT CARTER: The -- there's a -- so the
9 motion is to grant the permit as recommended by the staff
10 with the exclusion of elderberry plantings in the permit.

11 Does everybody understand the question, or the
12 motion?

13 MEMBER BROWN: Do we need to vote on the amendment
14 first?

15 PRESIDENT CARTER: If you accept the amendment --

16 MEMBER BROWN: I accept it.

17 PRESIDENT CARTER: -- I don't think we need to
18 vote.

19 MEMBER BROWN: Oh.

20 PRESIDENT CARTER: Is there a second for that
21 motion?

22 MEMBER SUAREZ: I will second it.

23 PRESIDENT CARTER: Okay. We have a motion and a
24 second.

25 LEGAL COUNSEL FINCH: Could I just have a

1 clarification.

2 Because when you restated his original motion,
3 that included at a future date, potentially elderberries
4 could be planted by way of a justification.

5 Is that included in the current motion?

6 MEMBER BROWN: Yes, it is.

7 PRESIDENT CARTER: Does everybody understand that?

8 VICE PRESIDENT HODGKINS: No. One more time.

9 It's the restoration without elderberries, but
10 what's the condition about elderberries in the future?

11 MEMBER BROWN: It will require additional
12 justification at that point in time, before this Board.

13 MEMBER RIE: And is it your intent that that would
14 come back before the Board?

15 MEMBER BROWN: Yes.

16 PRESIDENT CARTER: So any future requests for
17 elderberry plantings on this particular piece of property
18 would come back before the Board for consideration.

19 MEMBER BROWN: That's correct.

20 VICE PRESIDENT HODGKINS: So we could -- we would
21 have an opportunity to see if we can allow the
22 elderberries to be planted so that the state and the
23 people in the Central Valley get the benefit of not
24 spending \$60,000 an acre for mitigation in a private
25 preserve.

1 MEMBER BROWN: That's correct.

2 VICE PRESIDENT HODGKINS: Okay.

3 PRESIDENT CARTER: Okay. So we have a motion and
4 a second.

5 Everybody understand the motion?

6 Discussion?

7 MEMBER BURROUGHS: I have discussion.

8 PRESIDENT CARTER: Okay.

9 MEMBER BURROUGHS: I have a major concern about
10 planting riparian forests, woodland, oaks. All of these
11 items of these plantings have been a problem for floodway,
12 for our floodway system.

13 I am adamantly opposed to creating another
14 environment that in the future could possibly potentially
15 cause the people of California, as was just stated
16 earlier, a huge amount of money to clear out if we need to
17 in the future.

18 I think our floodways need to have grassland. So
19 that's my comment.

20 SECRETARY DOHERTY: Mr. President, may I comment
21 also?

22 PRESIDENT CARTER: Yes.

23 SECRETARY DOHERTY: I don't know how many of you
24 have been up to this site. Some of you have, and we stood
25 next to a fence line at Llano Seco's fence across the

1 northern end. The water is blocked up there, seedlings
2 have dropped, and there's becoming a solid oak tree wall
3 across there. And I think that by planting oaks in this
4 floodway, we're going to end up with the same thing either
5 in Angel Slough or further down.

6 PRESIDENT CARTER: Okay.

7 MEMBER BROWN: Mr. Chairman, I respect that
8 opinion, certainly, and that's correct. And from this
9 engineering data, I'm in support -- it is of a
10 nonrestrictive -- being nonrestrictive or a small amount,
11 due to the 3 to 4 miles width, I would certainly concur
12 with that.

13 But I was convinced by the arguments that due to
14 the width of the channel and the engineering data that
15 that would not be a major concern. The concern with the
16 elderberry is slightly different. I think you have more
17 of a restriction there with that particular plant than you
18 do with some of the others under consideration.

19 So that's why I went ahead and made the motion.

20 PRESIDENT CARTER: Okay.

21 Further discussion?

22 MEMBER BURROUGHS: Yes. I have a question.

23 On this planting mix, is there a -- is there
24 actually -- has our staff seen a plot plan of how this
25 planting is, how close together?

1 SUPERVISING ENGINEER FUA: Yes, they have
2 submitted a plot plan for the arrangement of the plants.

3 MEMBER BURROUGHS: And are the plants planted
4 north to south, east or west, in -- are they allowing for
5 flow and movement through?

6 SUPERVISING ENGINEER FUA: Correct. They are
7 planted in such a way that impediment to flood flows is
8 minimized.

9 MEMBER BURROUGHS: North to south, east to west?

10 SUPERVISING ENGINEER FUA: North to south. There
11 is actually a plot here.

12 MEMBER BROWN: I suggest that flood plan you have
13 probably includes elderberry, though, and if they are not
14 planting elderberry, they may require reconsideration of
15 that plan.

16 PRESIDENT CARTER: Okay.

17 MEMBER BURROUGHS: I'm not comfortable with it.

18 PRESIDENT CARTER: Further discussion? Ms.
19 Suarez?

20 MEMBER SUAREZ: Yes, I would actually like to ask
21 the applicant to address whether Mr. Brown's motion is
22 something that is acceptable and works for them? And I
23 believe you can also answer the question regarding the
24 plot.

25 MR. CARLIN: Yes. It seems like a reasonable

1 compromise. And I think that the way the projects are
2 designed is they are designed very much like orchards, so
3 they are in linear rows. The rows are with flow. So what
4 happens with the elderberries is, if you think of an
5 orchard, just maybe every tenth or fifteenth tree down
6 that row would be missing. So it wouldn't really require
7 any -- there wouldn't be any reconfiguration of the flow
8 characteristics of the design.

9 MEMBER BROWN: Okay. Good.

10 MR. CARLIN: Thanks.

11 MEMBER SUAREZ: And may I ask Mr. Larrabee -- I
12 would like to hear his opinion about this.

13 MR. LARRABEE: As I have said before, I don't like
14 this elderberry thing. It just complicates our issue.
15 I'm happy to have this component left out.

16 But to be hanging out there for some future
17 consideration when there will be a lot of discussion about
18 that, and we're talking about limited -- this discussion
19 needs to be happening at the Glenn County level with the
20 supervisors and the rest of those people because they are
21 the ones who are going to be -- wrangling with this and
22 the money issue and all the stuff that goes along with it.

23 By the way, you mentioned that plot plan. This
24 summer, when I was driving out there looking at the
25 levees, there were berms pulled out there that were

1 pulled -- did you say 16 and a half degrees or something,
2 back towards Bonnie Southam's driveway, for those of you
3 that have been there. And those berms would be
4 perpendicular to the flow of the water that goes across
5 the property. And if that's with the flood flow, I would
6 disagree with that.

7 SUPERVISING ENGINEER FUA: That wasn't part of the
8 project, actually. And our regulations allows actually
9 building structures there that's less than 36 inches in
10 height. So that's why we said we do not or we will not
11 figure in that kind of activities. It is in the
12 regulation, less than 36 inches in height --

13 MR. LARRABEE: The existing orchard was planted
14 north-south, flat forest. And the understory pruned up,
15 open space to those branches, especially those walnut
16 trees were as tall as I was, or more. There was nothing
17 in between.

18 SUPERVISING ENGINEER FUA: Well, at least what
19 they told us is they are going to plant it in rows in line
20 to the overflow patterns.

21 MR. LARRABEE: Those rows were perpendicular to
22 the flood flow.

23 SUPERVISING ENGINEER FUA: But they are not
24 permitted by us. That's not --

25 MR. LARRABEE: The permit --

1 SUPERVISING ENGINEER FUA: Are you talking about
2 the 96 acres?

3 MR. LARRABEE: No. I'm talking about the 136
4 acres.

5 SUPERVISING ENGINEER FUA: Yeah. We haven't
6 allowed any plantings there yet.

7 MR. LARRABEE: Remember, I called you this summer
8 and asked you about that.

9 SUPERVISING ENGINEER FUA: Yes, and we actually
10 sent an inspector and the inspector concluded that it is
11 within the regulatory allowance of 36 inches.

12 MR. LARRABEE: Under the conditions in this permit
13 that you're considering is, have those tree rows with flow
14 of water, and those berms are perpendicular to the flow,
15 which I'm assuming they would planted with trees, like
16 they have done on the other parcel next door.

17 PRESIDENT CARTER: I think the bottom line is, if
18 the plot plan is part of the permit application, it
19 becomes part of the permit, if and when approved. And
20 they would have to follow the plot -- the conditions of
21 the permit and the application. And so the plantings
22 would have to go according to that plan unless allowed
23 otherwise by the Rec Board. So regardless of where the
24 berms are and whatnot, the plantings would have to follow
25 the plot plan.

1 MEMBER BROWN: Mr. Chairman, if it would help, I
2 would be available to offer an amendment to the motion
3 that the plantings be in parallel to the stream flow.

4 Would that be -- so I would like to amend my own
5 motion and add that to the criteria. That ought to help
6 with the concern that we have for restricting the flood
7 flows.

8 PRESIDENT CARTER: Okay.

9 MR. LARRABEE: Can I second that?

10 (Laughter.)

11 MEMBER BROWN: We got a second.

12 PRESIDENT CARTER: Does the seconder accept that
13 amendment?

14 MEMBER SUAREZ: Sounds fine.

15 PRESIDENT CARTER: Okay.

16 MR. LARRABEE: It's the same way -- I'm sorry.

17 The 96 acres was planted that way, north-south. The work
18 that began this summer was going perpendicular to those
19 rows.

20 MEMBER BROWN: We want them parallel to the flow
21 though; right?

22 MR. LARRABEE: Yes, sir.

23 MEMBER BROWN: It will be parallel to the flow.
24 That's the amendment.

25 PRESIDENT CARTER: Okay. very good.

1 Any other further discussion?

2 MEMBER BROWN: Thank you for your help.

3 MEMBER RIE: Can you summarize the entire motion
4 one more time?

5 PRESIDENT CARTER: I can attempt to do that. And
6 the motioner and seconder can try and correct me if I am
7 wrong.

8 The motion is before us, to approve the permit for
9 restoration on the 136 acres excluding elderberry
10 plantings; and any restoration that occurs will be
11 parallel to the flow of the flood waters; future
12 consideration for elderberry plantings will come before
13 the Board; and the other stipulations from the staff
14 recommendation, including naming the Reclamation Board,
15 LD3, Army Corps of Engineers as part of the safe harbor,
16 will be part of this.

17 So that's my understanding of the motion.

18 Is that accurate?

19 MEMBER BROWN: Yes, sir.

20 PRESIDENT CARTER: Does everybody understand the
21 motion?

22 SECRETARY DOHERTY: Can I ask one more question?

23 PRESIDENT CARTER: Of course you may.

24 SECRETARY DOHERTY: The application to plant
25 elderberries may have to come back to us at a later date.

1 What happens if, oh, we've got an emergency situation, and
2 then after the fact, they tell us, "Oh, we've already
3 planted 500 elderberries. So now may we have your
4 permission to do that"?

5 GENERAL MANAGER PUNIA: It can't happen. They
6 have to get the permit or a variance, which we will bring
7 to the Board.

8 PRESIDENT CARTER: Okay. Motion and second.

9 Everybody understand the motion?

10 Any other further discussion?

11 MEMBER RIE: Yes. This is again directed towards
12 River Partners. Even though we eliminated the
13 elderberries from the permit, I still think it's really
14 important for you guys to address the financial impacts of
15 this project. So if you could please try to do that -- it
16 doesn't seem like it's much money. And when you guys
17 transfer the property to Fish and Wildlife or Fish and
18 Game, you know, it's going to be a lot of money, and it
19 seems like we could set aside some money to go back to the
20 County to take care of some of the financial impacts. And
21 they are real impacts.

22 And although your CEQA document didn't address it,
23 I still think those impacts are there. So that's my
24 concern and I would hope that you would try to resolve
25 that.

1 PRESIDENT CARTER: Any further questions?

2 Comments?

3 MEMBER BROWN: No amendment, but I would suggest,
4 Mr. Chairman, that should they come back for approval to
5 plant the elderberry, we might be more receptive to it
6 being done in Glenn County than elsewhere.

7 PRESIDENT CARTER: Okay. With that, Mr. Punia,
8 would you call the roll, please. We'll have a vote.

9 GENERAL MANAGER PUNIA: Board Member Emma Suarez?

10 MEMBER SUAREZ: Aye.

11 GENERAL MANAGER PUNIA: Vice president Butch
12 Hodgkins?

13 VICE PRESIDENT HODGKINS: I'm going to pass.

14 GENERAL MANAGER PUNIA: Board Member Teri Rie?

15 MEMBER RIE: Aye.

16 GENERAL MANAGER PUNIA: Board Member John Brown?

17 MEMBER BROWN: Aye.

18 GENERAL MANAGER PUNIA: Board Member Rose Marie
19 Burroughs?

20 MEMBER BURROUGHS: Oppose.

21 GENERAL MANAGER PUNIA: Board Member Lady Bug?

22 SECRETARY DOHERTY: No.

23 GENERAL MANAGER PUNIA: President Ben Carter?

24 PRESIDENT CARTER: Aye.

25 GENERAL MANAGER PUNIA: Vice President Butch

1 Hodgkins?

2 VICE PRESIDENT HODGKINS: No.

3 PRESIDENT CARTER: Okay. My count is, there are
4 four ayes and three no's. So the motion carries.

5 MEMBER BROWN: It's pretty close to the majority,
6 isn't it, Mr. Chairman?

7 PRESIDENT CARTER: Thank you very much. Rec Board
8 will work on processing the permit.

9 Let's see. Where are we? Ladies and gentlemen,
10 we're on Item No. 9, flood legislation implementation.

11 Mr. Punia?

12 Mr. Punia, we're going to take a three-minute
13 break while you're getting your presentation up. So we'll
14 recess for three minutes, please.

15 (Thereupon a break was taken in
16 proceedings.)

17 PRESIDENT CARTER: Let's continue on with our
18 agenda today. We are on Item No. 9, Flood Legislation
19 Implementation, consider delegation of authority for the
20 Board president and vice president to negotiate and enter
21 into agreements with the Department of Water Resources
22 regarding administrative changes mandated by recent
23 legislative changes to the Board, and to endorse
24 legislative proposals by the Department to amend such
25 legislation.

1 Mr. Punia?

2 GENERAL MANAGER PUNIA: Good afternoon, Board
3 President Carter and Board Members. Jay Punia, General
4 Manager, State Reclamation Board, here to present Item
5 No. 9.

6 As stated by President Ben Carter, consider
7 delegation of authority for the Board president and vice
8 president to negotiate and enter into agreements with the
9 Department of Water Resources regarding administrative
10 changes mandated by recent legislative changes to the
11 Board, and to endorse legislative proposals by the
12 Department of Water Resources to amend such legislation.

13 As most of you are aware, the governor passed --
14 signed major flood legislation on October 10th, 2007. The
15 new flood laws will take effect on January 1st, 2008.
16 These laws will reestablish the Reclamation Board as the
17 Central Valley Flood Protection Board as an independent
18 entity from the Department of Water Resources.

19 For implementing the new flood laws, the Board has
20 to coordinate with the Department of Water Resources
21 regarding administrative changes mandated by these laws.
22 The requested delegation is essential to fulfill some of
23 the mandates of the recently passed comprehensive flood
24 legislation by January 1st, 2008.

25 Therefore, I request the Board to delegate to the

1 Board president and vice president the authority of the
2 Board to negotiate and enter into agreements with the
3 Department of Water Resources regarding administrative
4 relations within the Board and the Department necessitated
5 by changes to the Water Code that will go into effect on
6 January 2008.

7 And to endorse such legislation, proposals by the
8 Department designed to promote that the feeling of the
9 president and vice president are in the best interest of
10 the Board.

11 And the motion is -- a copy has been given to
12 President Ben Carter, and it's projected on the screen.

13 PRESIDENT CARTER: Any questions for Mr. Punia?

14 MEMBER RIE: Yes. What type of agreements do we
15 need to enter into with DWR?

16 GENERAL MANAGER PUNIA: Based upon our initial
17 discussion with the Department of Water Resources, our
18 thinking is that the administrative work will still stay
19 with the Department of Water Resources. Technical aspects
20 of the work will be assigned to the Reclamation Board
21 directly, but we have to enter into agreements so that DWR
22 can continue to provide administrative assistance to the
23 Reclamation Board, for example, for budgeting, hiring
24 process, IT-type support, so that we can enter into an
25 agreement that the Department will continue to provide

1 those services.

2 MEMBER RIE: And under what agreement does DWR
3 provide all those services now? Under what agreement?

4 GENERAL MANAGER PUNIA: We have an old agreement,
5 1976, in which, based upon that, DWR is providing those
6 kind of services. So we may have to amend or have a new
7 similar agreement with the Department of Water Resources.
8 Plus the Department is also proposing to propose a
9 legislation to clean up the recently passed flood
10 legislation so that we can work with the Department of
11 Water Resources in developing those legislations.

12 PRESIDENT CARTER: There's also -- as part of that
13 agreement, there's a delegation of authority by the Board
14 to the director of DWR to provide certain services for the
15 Board, and that was the resolution that essentially made
16 official the agreement, the 1976 agreement. And that's an
17 agreement that this Board revisited a year and a half ago.
18 And so the number of the resolution escapes me, but that
19 will at some point need to be -- come back before the
20 Board, depending on what the agreement that is negotiated
21 between DWR and the Rec Board. We'll come back before the
22 Board and that resolution will be changed.

23 The concept here is to essentially have any
24 functions that are critical for public safety or policy be
25 reporting directly through the Board, and DWR would be

1 supplying administrative support, essentially personnel,
2 HR, other kind of administrative activities that are not
3 central to either policymaking or public safety.

4 And that would be kind of the transition posture,
5 obviously, subject to change in the future. But to
6 maintain operations in the near term, that's kind of the
7 direction we're heading with DWR.

8 MEMBER BROWN: Mr. Chairman?

9 PRESIDENT CARTER: Yes, sir.

10 MEMBER BROWN: I have some real concerns with this
11 motion. This is a real crossroads, I feel, for this
12 Board. I think the Board is going to be venturing into
13 the quasi judicial, quasi legislative hearings, in which
14 the Department of Water Resources certainly would be a
15 party.

16 And I wish to express to you strong feelings that
17 I think it's really important that you and our vice
18 president have along legal counsel with you when you are
19 interpreting the bills that were signed into law and how
20 they may play into our future activities. That's one.

21 I think you need to have some people that are
22 legally independent of a potential party for a couple
23 reasons. One is that it could come into contention at
24 some point later if their -- the Department of Water
25 Resources becomes a party on an issue and there's some

1 type of split vote on it, and adversaries to the
2 Department may come back, and it could haunt us if we went
3 ahead and put together this transaction with the legal
4 representation from the Department itself.

5 Whether we hire an independent legal counsel to go
6 with you or try to borrow one from the AG's office or even
7 from the State Water Resources Control Board I think are
8 options that this Board has. But whoever you bring on
9 board really needs to be familiar with the Porter-Cologne
10 Act which sets up the ex parte contact rule, and the
11 hearing speaks upon the rules of evidence. That's the
12 main concern.

13 The second concern is that I think whatever
14 solution that you and Mr. Hodgkins arrive at should be
15 reviewed by this Board for approval.

16 VICE PRESIDENT HODGKINS: Well --

17 PRESIDENT CARTER: If I could maybe just address
18 the first concern. I don't think it's our intention -- it
19 is not our intention to enter into discussions with DWR or
20 negotiate agreements with DWR without independent legal
21 counsel, and we initiated the process to engage legal
22 counsel with the AG's office. That legal counsel is not
23 in place yet, but that's the intent, is to have legal
24 advice outside of our DWR legal advice. And our DWR
25 attorneys are advising us the same. They are not entirely

1 comfortable in that role. So I think we're in agreement
2 there.

3 MEMBER BROWN: And if I may -- and excuse me. Let
4 me emphasize that whoever you retain needs to be able to
5 hit the ground with their feet running, both familiar with
6 the bills signed into law and then also with the
7 Porter-Cologne Act.

8 PRESIDENT CARTER: Okay. Very good.

9 Butch, did you have something to add to that?

10 VICE PRESIDENT HODGKINS: You know, I -- in the
11 discussions of our -- what DWR, I think in some cases many
12 of us may have jumped to a conclusion about the need for
13 significant changes to our regulations for us to be able
14 to go forward. Okay? So there's some possibilities that
15 the regulations we have in effect meet at least
16 technically the requirements of judicial hearings.

17 Now, I think we, both Ben and I, are very
18 interested in having somebody who's working just for us,
19 make sure they agree with that. But I think it makes
20 sense that that could be the case.

21 They need to sit down and be able to talk candidly
22 with DWR and talk to them about things is something that
23 under the Bagley-Keene Act is limited to two members of
24 the Board. I suspect there are things we will talk about
25 that just don't make sense to discuss in a public setting.

1 So I think if you don't have confidence that Ben
2 and I together are going to be able to tell the difference
3 between the kinds of things that are really important to
4 the nature of the Board and the Board's mission and the
5 practical business of providing personnel services, not
6 necessarily the people, but the personnel services --
7 accounting, contract management, that kind of stuff --
8 then I would suggest you figure out how -- who you want to
9 do that. Because those people need to be able to go in
10 and talk to DWR candidly and feel confident they have at
11 least trust to the Board members, and then we'll -- if
12 it's me, we'll exercise -- and Ben will exercise our best
13 judgement and come back and tell you what we did and why
14 if we absolutely do anything and try to share with you in
15 a public session as much as we can.

16 But it's a tough issue with the damn Bagley-Keene
17 Act to -- you know, we all ought to be involved in this,
18 but it just can't happen.

19 MEMBER RIE: I was just wondering, do we have a
20 means to contract with a private attorney to advise the
21 committee that's having these discussions? Can we go out
22 to hire somebody tomorrow?

23 GENERAL MANAGER PUNIA: The answer is no. I think
24 we discussed at our meeting, and the quickest way we can
25 bring an attorney is to request through the attorney

1 general. If you want to go through a private process, it
2 will take several months.

3 MEMBER RIE: Doesn't DWR have the ability -- don't
4 they have POs set up and independent contracts? I mean --

5 VICE PRESIDENT HODGKINS: Not for attorneys. With
6 the attorneys, there is -- apparently to hire outside
7 counsel requires approval of the governor and the AG. And
8 so it's a very long process to get through and be able to
9 do.

10 MEMBER RIE: Can we initiate that process?

11 VICE PRESIDENT HODGKINS: If you want to wait six
12 months.

13 MEMBER RIE: I don't think we need to wait. I
14 think we can get some advice from the AG's office, but I
15 think it has to be an independent attorney that's not
16 working for DWR at this point. That was the intent of the
17 legislation, that there be some independence between the
18 two agencies. So if we have a request in to the AG's
19 office, it seems like we need to get someone over and
20 advise the committee immediately and at the same time put
21 in the request to, you know, potentially contract with an
22 outside attorney.

23 PRESIDENT CARTER: Okay. And as part of the
24 staff's budget change proposal, they have put in a request
25 for two attorneys, which would be Rec Board employees,

1 which would be new hires.

2 MEMBER RIE: I think we need to look really
3 carefully at the dollar figure in that budget change
4 proposal, because good attorneys are 500, 600, 700 dollars
5 an hour.

6 GENERAL MANAGER PUNIA: We cannot go beyond civil
7 service classifications. Our budget is based upon the
8 civil service classification salary rates.

9 MEMBER RIE: Yeah, but we can -- I mean, the new
10 legislation gives us the authority to hire our own staff,
11 so it seems like we can put contracts in place to augment
12 civil service staff.

13 GENERAL MANAGER PUNIA: We can pursue it and try
14 it, but it's really difficult. First of all, this budget
15 change proposal to be approved, it will take several
16 months. And then to hire a private attorney, it will take
17 another several months. So I think the option that I want
18 to propose to the Board is, one, to bring an attorney from
19 the Attorney General's Office; and the second
20 recommendation by Board Member John Brown was to explore
21 the possibility of loaning an attorney from State Water
22 Resources Control Board. I think that may be possible in
23 the immediate future. So if it's okay with the Board, we
24 will pursue these two options so we have an independent
25 counsel.

1 SECRETARY DOHERTY: Well, the one from the Water
2 Resources Board is not what we want. We would want
3 someone from the Attorney General's Office.

4 GENERAL MANAGER PUNIA: That's the first choice.
5 We are already exploring it, that we can bring somebody
6 from the Attorney General's Office right away. If the
7 Board is not comfortable with that option, the other
8 option, Board Member John Brown proposed that we can try
9 to explore a possibility, loaning an attorney, who's
10 familiar with these type of regulations, from the State
11 Water Resources Control Board on a temporary basis.

12 MEMBER BROWN: They are completely independent
13 from the Department of Water Resources.

14 SECRETARY DOHERTY: Oh, okay.

15 MEMBER BROWN: Completely independent.

16 MEMBER RIE: That sounds like a good idea.

17 SECRETARY DOHERTY: But he would be familiar with
18 the changes?

19 MEMBER BROWN: He would be very familiar with the
20 Porter-Cologne Act, or she would be very familiar with the
21 Porter-Cologne Act, which is a quasi judicial hearing
22 process, hearing officers. And staff may or may not be
23 familiar with the law. Anyway, that's an alternative that
24 might happen fairly quickly. I can talk to the chair of
25 the State Water Resources Control Board. And now, going

1 to the AG's office, those are two options that could
2 really increase the comfort level, as far as I'm
3 concerned, with how the point -- the process or the path
4 that we're headed down.

5 And back to Butch's comment is that it certainly
6 is not a matter of trust, absolutely not. It's -- in fact
7 if I had to pick two people, that's what I would probably
8 do. But as seen here in the last issue, before this
9 Board, there is a lot of good input and comment that
10 collectively we're able to provide. And that was the
11 point that I was trying to make.

12 In fact, if it wasn't for the Bagley-Keene Act, I
13 would like to have Emma be part of that, as her legal
14 background. But that precludes it, the Bagley-Keene Act
15 does.

16 But that was the reason for my statement,
17 Mr. Chairman, to try to get the collective knowledge of
18 the Board as opposed to laying it all off on just two
19 people.

20 PRESIDENT CARTER: I think I would certainly be
21 more comfortable with whatever proposal we have comes back
22 before the Board. The issue is timing and trying to have
23 an agreement in place so that we can continue to do
24 business in January. We can, if possible, hold some
25 special meetings of the Board to consider the proposals in

1 December and bring the agreements before the Board, and
2 the Board can consider those. And to the extent that we
3 can make that happen, I would be all in favor of that
4 because I would welcome everyone's input. It is a
5 challenge to try and do this in a vacuum that's created by
6 Bagley-Keene. It really is.

7 But you know, I think maybe Nancy, without the
8 delegation of the authority of the Board to the president
9 and vice president, how far can those two members go in
10 terms of negotiations with DWR?

11 LEGAL COUNSEL FINCH: One clear limit is they
12 cannot take a Board action. So that would need to be
13 brought back to the Board, and part of it is working with
14 an attorney, whether it's Scott or I, or a new attorney,
15 up to the change, is a discussion of what steps are being
16 taken and at what point is it a Board action that needs to
17 come back. And that's one solution, to delegate the
18 authority to, you know, negotiate. But at the point it
19 becomes a Board action, to come back to the Board.

20 PRESIDENT CARTER: At that point we would probably
21 be dealing with independent counsel, anyway. So it would
22 not necessarily be you or Scott; it would be a new
23 attorney.

24 LEGAL COUNSEL FINCH: But that is one way to deal
25 with that.

1 PRESIDENT CARTER: When you say not -- they are
2 not able to take action, that means they are not able to
3 sign anything; is that correct? Or define that, please.

4 LEGAL COUNSEL FINCH: Okay. Let me get back
5 Bagley-Keene out here.

6 PRESIDENT CARTER: Okay.

7 MEMBER BURROUGHS: While she's looking that up, I
8 have just a question, trying to think outside the box as
9 we try to perceive your -- this whole new process.

10 Is it possible that DWR has an attorney now that
11 they can, so to speak, fire, and we could hire?

12 PRESIDENT CARTER: I don't know the answer to that
13 question.

14 MEMBER BURROUGHS: If they are no longer employed
15 by DWR.

16 MEMBER SUAREZ: I would just be afraid that there
17 are so many issues that we cover that from previous
18 representation, we might not be able to provide.

19 GENERAL MANAGER PUNIA: An attorney situation --
20 most likely, I think the attorney general will provide us
21 an attorney pretty soon. And we are meeting Monday again,
22 and we will know the status of where we are in terms of
23 getting counsel from the attorney general.

24 MEMBER BURROUGHS: Have you already met with them?

25 GENERAL MANAGER PUNIA: It's assigned to the DWR

1 chief counsel to pursue this option and then they are
2 pursuing it, and we will know pretty soon.

3 PRESIDENT CARTER: I think with regard to that, I
4 would like to make contact with DWR chief counsel to find
5 out where they are this afternoon. I would like to have
6 independent representation at the Monday meeting if we can
7 arrange that.

8 SECRETARY DOHERTY: Did you --

9 PRESIDENT CARTER: We'll never get out of here.

10 SECRETARY DOHERTY: Did you contact -- what did
11 she want by this legislation? Do they know? Is it clear?

12 VICE PRESIDENT HODGKINS: We actually met with
13 Ms. Walk and her staff, Emma and I.

14 PRESIDENT CARTER: Mr. Hodgkins and Ms. Suarez.

15 VICE PRESIDENT HODGKINS: And in those
16 discussions, I think the message that I heard very clearly
17 from Ms. Walk -- and you haven't heard all of these yet --
18 is what she was most concerned about is that in terms of
19 new powers that have been granted to the Board, in terms
20 of reviewing and commenting and working with local
21 agencies on general plan amendments to reflect flood
22 control as well as our goal here, in public noticing. And
23 we really haven't been through the -- I encourage you all
24 to try and read those bills very carefully. And it's very
25 difficult to do. There's a lot of things coming up, not

1 until mostly 2009, where the Board is going to become very
2 much a part of reviewing land use plan amendments and
3 annual reports on levee fitness. And her message was to
4 be sure and take that seriously and to deal with it in a
5 responsible public safety-conscience way.

6 We did talk specifically about the question of,
7 did the legislature intend to set up this ex parte
8 communication barrier between DWR and the Rec Board, and
9 the answer was no; we want you to work closely with the
10 Department of Water Resources.

11 Now, we have not talked to Mr. Steinberg and his
12 staff, who are the other people who would have a
13 representative on the Board. But we are in the process of
14 getting that set up probably within the next week.

15 The legislature, even though it may not look like
16 it to us, has been very busy with the additional session
17 that was called on water and health care.

18 SECRETARY DOHERTY: Thank you.

19 MEMBER BROWN: This, Mr. Chairman, may be a good
20 example where we do need new counsel, because if this
21 Board is to have ex parte rules, you can't be selective on
22 who you are going to have it with. Even the Water Board
23 presumably cannot have ex parte contact with the
24 governor's office or anybody else on that issue. The
25 Department of Water Resources is the same way. If you are

1 a party, then you cannot have a sit-down and talk and
2 meeting with one party without the other being present,
3 and in a public hearing. It's a good rule, as a matter of
4 fact, I think.

5 LEGAL COUNSEL FINCH: If I may --

6 GENERAL MANAGER PUNIA: I want to emphasize, this
7 delegation is just to keep the process going so that we
8 can continue to meet with the Department of Water
9 Resources. If there are major issues, we can have a
10 special meeting of the Board so that we can apprise to the
11 Board. But in the meantime, we will continue our dialogue
12 with the Department of Water Resources so that we are
13 ready on December 31st to shift into the new mold.

14 VICE PRESIDENT HODGKINS: One of the things we
15 might do is, as I'm looking at those, is to simply state
16 that that authority only allows us to commit to six months
17 without the full endorsement of the Board, or something
18 like that.

19 Because I think the important thing to understand
20 is that effective the first of the year, if we're out on
21 our own, totally, trying to get work done, I mean, you are
22 looking at the Board members and Jay. And I'm not even
23 sure whether our staff is still our staff under the nature
24 of this legislation. So we got to figure some way to keep
25 in business while we have a little more time to figure out

1 what in the long term the Board and DWR and the
2 legislature wanted to hear.

3 PRESIDENT CARTER: Ms. Finch?

4 LEGAL COUNSEL FINCH: Yes.

5 Well, under the action taken and defined, it's a
6 motion, proposal, resolution, order, or similar action.
7 So it's vague. And that's why if you delegate the
8 authority to two members, are you delegating the ability
9 to take an action?

10 And that's something that does need to be
11 clarified as part of this motion, if you take one. And
12 also -- and that's why part of my recommendation is,
13 whomever ends up being your attorney could consider
14 whatever discussions are taking place and proposals and
15 whether that would rise to the level of an action that
16 needs to be brought to the Board.

17 But there's not a laundry list at this point that
18 we can follow. So it is something that needs to be
19 considered when -- the consideration of this item.

20 MEMBER BURROUGHS: Mr. President, with your
21 acceptance, and vice president Mr. Hodgkins, I make a
22 motion to grant the authority to Board president and vice
23 president to negotiate and enter into agreements with the
24 Department of Water Resources regarding administrative
25 relations between the Board and the Department that's

1 necessitated by the changes to the Water Code that will go
2 into effect in 2008.

3 And with that, I think that because of the
4 timeline, we need to expedite giving you full authority to
5 act on behalf of the Board.

6 SECRETARY DOHERTY: So you are saying they don't
7 need to bring it back to us?

8 MEMBER BURROUGHS: That's correct.

9 PRESIDENT CARTER: Okay. We have a motion.

10 MEMBER RIE: I would second that motion with the
11 caveat that we negotiate these agreements that we
12 absolutely have independent counsel, and we don't have DWR
13 counsel representing DWR, and DWR counsel representing us
14 to enter into these agreements with DWR.

15 MEMBER BURROUGHS: Accepted.

16 PRESIDENT CARTER: Okay. So we have a motion and
17 a second.

18 MEMBER BROWN: Question.

19 PRESIDENT CARTER: You are calling for the
20 question? Okay.

21 All those in favor -- I'm sorry. We do have some
22 public comment.

23 Mr. Shapiro?

24 SECRETARY DOHERTY: He wants \$700 an hour.

25 MR. SHAPIRO: Is it \$700 an hour?

1 SECRETARY DOHERTY: Isn't that what you said?

2 MR. SHAPIRO: That's only good attorneys.

3 Obviously, I'm not good.

4 Scott Shapiro, frequent counsel to applicants. I
5 wanted to say, I really support the discussion and the
6 effort the Board is taking. I think you are doing exactly
7 what you need to do, and representing the applicants who
8 want to make sure there's a Board here, for many reasons,
9 including so we can keep getting projects going. This is
10 great.

11 I personally have tremendous confidence in the
12 ethics of Nancy and Scott as your counsel. But I also
13 support the notion of independent counsel as soon as
14 possible.

15 The one thing I wanted to say, which was hopefully
16 helpful is, I agree with Member Brown's comment regarding
17 the State Water Resources Control Board and their counsel
18 having this kind of expertise. And because of
19 Thanksgiving week and limited time, there are other state
20 boards that possibly could be called upon as a resource.
21 The State Lands Commission, which is within the resources
22 agency, has this kind of function, and I believe has its
23 own counsel. Fish and Game Commission, likewise, I think
24 is similar; it has its own counsel. So there are other
25 boards that we can -- that you can look to if you can't

1 get someone from the State Water Resources Control Board.

2 And finally, I agree with your comment, Mr. Brown,
3 about ex parte communication. I think the language in the
4 legislation is extremely restrictive. It doesn't only say
5 you can't talk to parties; it says you can't talk to
6 people who have an interest. And DWR has an interest in
7 most applications before you. If you look at SAFCA,
8 Sutter Counties, and Three Rivers, DWR is a funder for all
9 of them. You would be precluded from talking to DWR on
10 January 1.

11 So there are some great reasons to get this
12 going .

13 Thanks.

14 PRESIDENT CARTER: Thank you, Mr. Shapiro.

15 So my understanding, and correct me if I'm wrong,
16 the question has been called for, we vote. Further
17 discussion?

18 MEMBER BURROUGHS: Do you want Jay to call roll?

19 PRESIDENT CARTER: Is that correct?

20 SECRETARY DOHERTY: Well, yes. What he's doing
21 is, he's going to vote on whether or not we continue to
22 discuss this. That's what's calling for the question
23 means.

24 MEMBER BURROUGHS: It's for the vote.

25 MEMBER BROWN: No, it's for the vote.

1 SECRETARY DOHERTY: That's what you're saying, but
2 when you call for the question, that's what calling for
3 the question means.

4 PRESIDENT CARTER: Everybody ready to vote.

5 MEMBER RIE: I don't think the call for the
6 question was seconded, anyway.

7 SECRETARY DOHERTY: It doesn't have to be.

8 PRESIDENT CARTER: Okay. Shall I pull out my
9 Robert's book and take a recess?

10 (Laughter.)

11 VICE PRESIDENT HODGKINS: Call the roll.

12 PRESIDENT CARTER: Okay. Mr. Punia, would you
13 call the roll, please.

14 GENERAL MANAGER PUNIA: Board Member Emma Suarez?

15 MEMBER SUAREZ: Aye.

16 GENERAL MANAGER PUNIA: Vice President Butch
17 Hodgkins?

18 VICE PRESIDENT HODGKINS: Aye.

19 GENERAL MANAGER PUNIA: Board Member Teri Rie?

20 MEMBER RIE: Aye.

21 GENERAL MANAGER PUNIA: Board Member John Brown?

22 MEMBER BROWN: Aye.

23 GENERAL MANAGER PUNIA: Board Member Rose Marie
24 Burroughs?

25 MEMBER BURROUGHS: Aye.

1 GENERAL MANAGER PUNIA: Board Member Lady Bug?

2 SECRETARY DOHERTY: Aye.

3 GENERAL MANAGER PUNIA: President Ben Carter?

4 PRESIDENT CARTER: I abstain.

5 MEMBER BURROUGHS: Okay. But did you -- I asked
6 the question if it was upon your approval and Butch's
7 approval. Do you approve to take -- do you approve to
8 take -- to accept the responsibility?

9 PRESIDENT CARTER: I will do what the Board wishes
10 to do, and the Board has voted to delegate the authority.
11 So I will do that. I abstained because I'm kind of a
12 party to the motion.

13 MEMBER BURROUGHS: That's okay. But as long as
14 you accept the responsibility, that's great.

15 PRESIDENT CARTER: Yes, I accept.

16 MEMBER BURROUGHS: Thank you.

17 GENERAL MANAGER PUNIA: Thank you.

18 PRESIDENT CARTER: All right. Moving on to
19 Item 10, Lower San Joaquin River Feasibility
20 Investigation, consider approval of a letter of intent to
21 become the nonfederal sponsor of the Lower San Joaquin
22 River Feasibility Study.

23 Mr. Rice has been very, very patient. It's -- I
24 guess we're past 11:30 a.m., so we can consider this
25 particular item. I apologize for the delay. Thank you

1 for your patience.

2 MR. RICE: Thank you for having me here this
3 afternoon.

4 Good afternoon, Mr. President and members of the
5 Board. My name is Merrit Rice, and I am a water resources
6 engineer for the Department of Water Resources in the
7 Division of Flood Management.

8 I am here today to request the Board approve
9 writing a letter of intent to the Sacramento District
10 Corps of Engineers for the Lower San Joaquin River
11 Feasibility Investigation.

12 With me today is Alicia Kirchner. Alicia is with
13 the Corps of Engineers, and she's chief of their Planned
14 Formulation Function. Senior Flood Division Management --
15 Mr. Qualley was here a few moments ago, but he had to be
16 called away for another discussion. And previously, there
17 were representatives here from San Joaquin County and
18 other nonfederal sponsors, but they too had to leave for
19 other commitments.

20 The Corps of Engineers completed the
21 reconnaissance scope study of flood damage reduction and
22 ecosystem restoration improvements along the Lower San
23 Joaquin River in September of 2004.

24 The major purpose of that study or any
25 reconnaissance scope study with the Corps of Engineers is

1 to identify the general focus of what the problem is that
2 you are trying to solve and is there likely feasible
3 solutions. In other words, is there justification for the
4 federal government and the Corps to proceed with
5 feasibility scope investigations?

6 At the time, the reconnaissance study, it was
7 identified that the primary local sponsor would be the
8 South Delta Water Agency. However, as I understand,
9 following the completion of the reconnaissance study --
10 and I missed something there, because the next major
11 function after a reconnaissance study is completed, and
12 there's a determination that there is a problem, there is
13 a federal interest to move forward, is the completion of
14 what's called a Project Management Plan, or a PMP; and
15 along with that, a feasibility and cost sharing agreement,
16 an FCSA. And those haven't been completed yet.

17 In any event, as I understand it, following the
18 completion of the reconnaissance study, the further
19 coordination failed to generate sufficient interest to
20 continue on the part of the potential nonfederal sponsors
21 at the time of the project management plan and the FCSA.
22 Earlier this year, however, representatives from the San
23 Joaquin County, the San Joaquin Area Flood Control Agency,
24 or SJAFCFA, Reclamation District 17, and the cities of
25 Stockton, Manteca, and Lathrop identified their interest

1 in becoming a sponsor for the feasibility study.

2 Their interests -- their indication of interest
3 has significantly energized the need to complete the PMP
4 and the FCSA. The primary study area includes the main
5 stem of the Lower San Joaquin River and its floodplains
6 from the downstream terminus of basically the east side
7 bypass, downstream, to and including the city of Stockton.
8 You have a map of the study area in your packet.

9 This area includes the lower portions of the major
10 tributaries to the San Joaquin River and distributaries in
11 the southern most region of the delta. In the city of
12 Stockton, it generally includes from the Bear Creek on the
13 north to French Camp Slough on the south.

14 The Department is coordinating with the Corps in
15 their preparation of the PMP and FCSA. The purpose of the
16 Project Management Plan is to identify the major study
17 tasks, the study responsibilities, the study management,
18 schedules, and costs.

19 And we intend that the PMP and feasibility
20 investigation will fully support the goals of FloodSAFE
21 and SB 5 and other recent legislation.

22 The cost of the feasibility study will simply not
23 be known until the PMP is completed. This cost is to be
24 shared equally between the state and the Corps. The
25 Department intends to further share the nonfederal portion

1 of the cost, or 50 percent of the total cost, with local
2 sponsors. And this will be done through a local FCSA.

3 In addition to the sponsors I mentioned, we are
4 planning immediately, upon action of this Board, to
5 contact other potential interests along the Lower San
6 Joaquin to assess their willingness to be included in the
7 investigation. That willingness is demonstrated by their
8 desire to become a part of the cost share and local
9 sponsor.

10 The intended source of state share of funding for
11 the investigation will be from provisions in Proposition
12 84. Guidance for the application for use of these funds
13 is underway and expected to be completed by the spring of
14 2008.

15 Approval of this guidance will allow use of the
16 grant funds to execute the FCSA with the Corps.

17 We expect the study to take about 36 months to
18 complete. This project will be a detailed feasibility
19 report including all supplemental, environmental, and
20 other technical documentation. Pending the successful and
21 positive outcome of the study, the report will be
22 processed by the Corps to Congress for potential
23 authorization of a federal project.

24 I personally believe that there's a high
25 likelihood that there will be a positive outcome. And

1 this is especially because of the significant flood
2 problems that are occurring and especially with the
3 significant existing urban development in the study area,
4 or in the lower parts -- upper parts, the northern most
5 parts, and how that growth is occurring in the future.

6 Again, all we are asking for today is Board
7 approval to provide a letter of intent, from the state, to
8 act as the nonfederal sponsor to the Corps.

9 Corps representatives have indicated that this
10 letter is important to them to justify them continuing
11 with preparing the PMP and FCSA.

12 MEMBER BURROUGHS: I move that we approve the
13 letter.

14 MEMBER BROWN: Second.

15 SECRETARY DOHERTY: A question. Why are there no
16 dates on these letters? Is it because it's not the date
17 it went out? I am just curious. So when they send it --
18 okay. They put a date on it. That's what I want to know.

19 PRESIDENT CARTER: Okay. There's a motion and a
20 second.

21 Mr. Rice, did you have something to add?

22 MR. RICE: What's in your binder is not the final
23 letter, but the final letter is in your packet. I'm
24 sorry.

25 SECRETARY DOHERTY: There's a draft letter here.

1 STAFF ASSISTANT PENDLEBURY: If you choose to
2 approve this --

3 PRESIDENT CARTER: Lorraine, could you introduce
4 yourself, please, for the record.

5 STAFF ASSISTANT PENDLEBURY: I sure can. I'm
6 Lorraine Pendlebury, staff assistant to the Reclamation
7 Board.

8 I just wanted to alert you that in your folders is
9 actually the revised letter. The content hasn't changed
10 very much, but in a staff meeting it was decided that
11 instead of Mr. Punia signing the letter, that it should be
12 signed by the Board president, the secretary, and staff
13 counsel. Okay?

14 PRESIDENT CARTER: So this letter is in the packet
15 that was put on the desk this morning.

16 MEMBER BURROUGHS: I accept the revised draft
17 letter presented by the staff.

18 MEMBER BROWN: So there's a second.

19 PRESIDENT CARTER: Okay. So the motion and second
20 are proposing to send a letter dated November 16th to
21 Colonel Chapman, Sacramento District, under the signature
22 of president, secretary, and counsel for the Board.

23 VICE PRESIDENT HODGKINS: I would wonder if the
24 motion and second are -- can we include in here to the
25 chairman of the Board the authority to sign the letter

1 either with minor substantive editorial changes that may
2 occur as people go through and finally look carefully at
3 this letter?

4 PRESIDENT CARTER: Do we anticipate any changes?
5 Staff?

6 GENERAL MANAGER PUNIA: No. I think the letter is
7 in good shape, unless the Board has any comments.
8 Otherwise, we will request, if the Board approves this
9 letter, we will ask the President to sign it after the
10 meeting.

11 MEMBER BURROUGHS: Okay. One question would be
12 for legal counsel.

13 Is there any problems with this letter?

14 LEGAL COUNSEL FINCH: No, there isn't; the
15 concerns have been addressed.

16 MEMBER BURROUGHS: Perfect.

17 PRESIDENT CARTER: Okay. So we don't anticipate
18 any changes to the November 16th draft that you have in
19 your packet.

20 VICE PRESIDENT HODGKINS: That's fine.

21 PRESIDENT CARTER: Okay.

22 Any further discussion? All those in favor,
23 indicate by saying "aye."

24 (Ayes.)

25 PRESIDENT CARTER: And any opposed?

1 Motion carries.

2 Mr. Rice, thank you very much. Thank you for your
3 patience, once again.

4 MR. RICE: Thank you.

5 PRESIDENT CARTER: We're on to Item 12, Board
6 Comments and Task Leader Reports. Kind of just go down
7 the table and maybe, Emma, we might start with you.

8 MEMBER SUAREZ: Thank you, Mr. Carter.

9 I won't add any more to what Mr. Hodgkins said
10 regarding our meeting with Assemblymember Walk. It was a
11 very good meeting. And we go forward to welcoming her to
12 the Board the same way that we would look forward to
13 welcoming Mr. Steinberg to the Board. She sounded very
14 eager for January to come and join us.

15 The only thing that I would like to add is, Member
16 Rie and I were discussing the formatting -- this might
17 sound a little too administrative, but I thought it would
18 be important for us to think about. The formatting and
19 the way proposals for permits are brought to the Board,
20 sometimes I just find myself fishing through some of these
21 reports to try and find some of the key points. And I
22 happen to believe that Member Rie has a tremendous amount
23 of expertise in terms of reviewing these permits.

24 And I've asked her and she's agreed to, or she
25 would consider helping, put together a template for how

1 these staff reports should be prepared and presented for
2 the Board. She said that she would be happy to do it.

3 So I would like to ask Board members to see if
4 that's something that you are supportive of her doing.

5 PRESIDENT CARTER: Does Member Rie, in fact, agree
6 to do this?

7 MEMBER RIE: She talked me into it.

8 PRESIDENT CARTER: Do any Board members have any
9 objections?

10 Staff, any objections?

11 So it shall be written.

12 MEMBER RIE: I won't be doing it over the
13 Thanksgiving holiday.

14 PRESIDENT CARTER: Okay. Very good. Thank you.

15 Anything else? Ms. Suarez, anything else?

16 MEMBER SUAREZ: No, sir.

17 PRESIDENT CARTER: Mr. Hodgkins?

18 VICE PRESIDENT HODGKINS: Just a couple of things
19 in passing. I mentioned earlier a meeting with the folks
20 from San Joaquin County and their desire and I think the
21 Board's desire to consider setting up a task force,
22 because there's lots of work there and the feasibility
23 study will be part of this as well.

24 Also, I attended a conference this week where I
25 served on a panel to discuss the new flood laws and the

1 other members of the panel included Ron Stork from Friends
2 of the River and Jones Minton from Planning and
3 Conservation League. And it was an interesting panel.
4 They have a little bit different perspective perhaps than
5 I do on what it took to get these laws enacted. But
6 again, I encourage you to try and read them. Maybe we'll
7 get an English language translation here before too long.

8 And I guess the last thing is, the 408 letter
9 suggesting that we set up, did that get out?

10 GENERAL MANAGER PUNIA: It's ready to be mailed.
11 President Ben Carter signed off on it. DWR
12 recommended another local representative to be added. DWR
13 thinking was that we had the local representative from the
14 Sacramento system, but we don't have a representative from
15 the San Joaquin system. So in further discussion with the
16 DWR and the locals, the nominated Chris Neudeck represent
17 the San Joaquin. So we are going to add that name and
18 mail the letter Monday, first thing.

19 VICE PRESIDENT HODGKINS: Good.

20 PRESIDENT CARTER: Fortunately, those edits can
21 take place ahead of the signature page, and I don't have
22 to resign.

23 GENERAL MANAGER PUNIA: That's the plan.

24 PRESIDENT CARTER: Anything else, Mr. Hodgkins?

25 VICE PRESIDENT HODGKINS: Nothing else.

1 MEMBER RIE: There is one more thing on the 408.
2 Les Harder from DWR is putting together what he calls a
3 framework document for early implementation projects.
4 Those are the state bond funded projects. I think the
5 Feather River Setback Levee is considering one of those
6 type of projects. And it would basically put together a
7 preliminary agreement between us and the Corps as to how
8 the bond projects would be processed through the Corps and
9 fast tracked, so that this 408 permitting process, or
10 process, whatever you want to call it, doesn't hold up any
11 of the bond projects. So Les put that together. I don't
12 know where it's at. I know he met with Jay.

13 GENERAL MANAGER PUNIA: We had a chance to review
14 it, and that will be discussed. It's in this draft form.
15 When the task force is established, it will be part of the
16 agenda to discuss it at the first meeting.

17 PRESIDENT CARTER: Okay.

18 MEMBER RIE: That's it.

19 PRESIDENT CARTER: That was it? Okay.

20 Lady Bug?

21 SECRETARY DOHERTY: I got quite a few things.

22 There's something that is of concern to me, and
23 John mentioned it at our meeting, and that is that we are
24 an appointed board, a board that is required to make many
25 decisions. We repeatedly delegate that duty to the

1 general manager. In some situations, he will be acquiring
2 the knowledge that is required for a final decision, but I
3 feel we must be very judicious in the decisions we require
4 him to make. Perhaps some of you have words for me.
5 Perhaps I'm missing something. That's a concern I have.

6 My next question is in regards to the M&T
7 situation. I was asked at the TAC meeting, which is the
8 Technical Advisory Meeting for the Sacramento River Area
9 Conservation Forum, if we could override the decision of
10 the Department of Water Resources to do nothing regardless
11 of the written history relating to that situation. I said
12 I didn't know and would ask her today and find out.

13 Is it possible to do that?

14 MEMBER BURROUGHS: Good question.

15 LEGAL COUNSEL FINCH: Well, I think the Board
16 could put on the agenda, make a motion for something to
17 happen, possibly. But the Board doesn't have funding.
18 And I think part of the issue is that DWR is the funding
19 source, and it's how DWR and the Reclamation Board
20 interact as part of what's going on here. So I don't
21 think you have the authority to override DWR decisions.

22 SECRETARY DOHERTY: All right.

23 MEMBER SUAREZ: May I ask a question? Would that
24 be the case under the new authorities under -- that kick
25 in '08?

1 LEGAL COUNSEL FINCH: With this particular
2 situation, if new funding sources come in, the Reclamation
3 Board changes the adopted plan of flood control. There's
4 a statewide plan of flood control. There's so many
5 variables out there that with all the changes occurring,
6 perhaps there are changes that would allow the Reclamation
7 Board to address this issue independently of DWR,
8 including the funding. But currently, that is not in
9 place. And I suspect nothing is in the pipe to allow that
10 to occur.

11 MEMBER BURROUGHS: One comment about the funding.
12 While we may not have the funding, I definitely think we
13 have the authority to send a letter and, if the Board so
14 wishes, to give our viewpoint about M&T. And I think we
15 should have that as part of our discussion for the next
16 agenda.

17 MEMBER RIE: Not to get off tangent, but I want to
18 chime in too. We don't necessarily hold the purses, but
19 DWR acts on our behalf when it comes to levee maintenance
20 under the original delegation of the authority. So in a
21 sense, they are working for us under that delegation, so
22 we do have the authority, but we're not controlling the
23 money.

24 MEMBER BURROUGHS: Agreed.

25 SECRETARY DOHERTY: So we could send them a letter

1 saying, "hey, we think something should be done"?

2 MEMBER BURROUGHS: Yes.

3 SECRETARY DOHERTY: And then if it's not, it's
4 because they don't have money. All right.

5 GENERAL MANAGER PUNIA: The way this is set up is,
6 the levee erosion programs, they are under DWR
7 jurisdictions. They are not Reclamation Board programs.
8 So we don't have any power to direct them on addressing
9 erosion along the levee system. The program they are
10 implementing, that's the way my thinking is that the
11 programs -- we have a subventions program and we cost
12 share the project with the U.S. Army Corps of Engineers.
13 Those, we have full authority to change or decide what
14 needs to be done. But some of the programs, like levee
15 evaluations and this critical erosion program, their DWR
16 program, we can send them a letter but we may not be able
17 to overwrite the decision.

18 MEMBER RIE: Isn't DWR doing the levee inspections
19 under the delegation of the authority?

20 GENERAL MANAGER PUNIA: Inspection, yes. But
21 critical erosion program, no.

22 CHIEF ENGINEER BRADLEY: The Water Code
23 specifically gives DWR responsibility for maintenance in
24 certain features of the project. So they don't act
25 under -- we provide the assurances to the Corps, but the

1 legislature has delegated to them the authority to carry
2 out the maintenance responsible for those assurances. So
3 they maintain the weirs, they maintain the channels.

4 MEMBER BURROUGHS: I would still like it to be on
5 the agenda because I think there's a way we could word a
6 letter.

7 CHIEF ENGINEER BRADLEY: I think the Board can
8 send a letter to DWR.

9 MEMBER BURROUGHS: Thank you.

10 SECRETARY DOHERTY: Okay. If maintenance is
11 neglected, why does it become necessary to mitigate? Is
12 there any way an exemption can be granted because of
13 negligence by the state? And the Tisdale Weir is a
14 perfect example. Now, is there anything that we can do
15 about that, not in that particular case, because it's
16 over, it's done with.

17 CHIEF ENGINEER BRADLEY: Are you asking whether --
18 because the state's negligent, that they are exempt from
19 mitigation?

20 SECRETARY DOHERTY: Because the state is
21 negligent, why do we have to mitigate? Yeah. They were
22 negligent.

23 CHIEF ENGINEER BRADLEY: That's exactly right.
24 You know, they did not perform the maintenance. And
25 that's the legislature -- if they don't appropriate the

1 money, then we don't have the money to do the maintenance.

2 That was a problem in the late '90s, early 2000s.

3 We were cutting staff, the budgets were being cut,

4 maintenance was going down the tubes, inspection of

5 designating floodways still has not resumed, particularly.

6 So there's lots of things that the state takes

7 responsibility.

8 I don't think that trumps the requirements of

9 other laws to mitigate for impacts of the project, both

10 state and federal laws that require mitigation.

11 SECRETARY DOHERTY: But there would have been an

12 impact if the state had done what it was supposed to do.

13 CHIEF ENGINEER BRADLEY: That's exactly correct.

14 So it behooves the state to perform its maintenance on a

15 regular basis. It doesn't mean they are going to fund it.

16 It's the same with all the levee maintaining

17 districts. They would have these letters from the Corps

18 if they maintain their levees to perfect standards. But

19 they tend to put it off and it does not take long to get

20 into a position where you are required to mitigate for

21 what you do.

22 SECRETARY DOHERTY: There's no way that an

23 exemption can be granted?

24 CHIEF ENGINEER BRADLEY: Meaning more of an

25 exemption or a trade off or a justification maybe?

1 SECRETARY DOHERTY: Yes.

2 CHIEF ENGINEER BRADLEY: Not to my knowledge.
3 That's more of a legal question. But my understanding is,
4 you are required to mitigate.

5 PRESIDENT CARTER: The problem is, the buck stops
6 with the legislature, and the legislature, perhaps it
7 seems they really do not understand the consequences of
8 some of their actions in terms of not funding things. But
9 even if they are the best of intentions, if they don't
10 appropriate the dollars, they won't get there. And they
11 are the ones who appropriate the dollars.

12 SECRETARY DOHERTY: Okay. One of my duties is to
13 attend the TAC and the regular monthly meeting of the
14 Sacramento River Conservation Area organization. Their
15 goal is to preserve the remaining riparian habitat and to
16 establish a continuous riparian habitat along the river
17 from Redding to Verona.

18 Now they are demanding that all projects, whether
19 DWR or Reclamation, be reviewed by them. I feel they are
20 giving themselves a reason to exist. In addition to that,
21 they are to give and in quotes on their letterhead, "give
22 full consideration to landowner, public, and local
23 government concerns."

24 Time and again, landowners expressed concern but
25 were ignored and now only one landowner and the chairman

1 from Yolo County attends from the counties involved. All
2 agency people attend.

3 And I don't know how impacted we're going to be by
4 some of their projects, but they are planning things along
5 the river.

6 My activities, I went to a TAC meeting and we
7 visited a 5 million, five and a half -- oh, mile and a
8 half -- it was only one and a half miles -- restoration
9 site along the river at Mile 182. It's a site to behold
10 with heavy burlap anchored on the banks, trees planted,
11 coyote brush planted, irrigation system in, trees anchored
12 with chains, along the lower bank for fish habitat. An
13 investigation and study of Stoney Creek, as a major
14 tributary to the river, is taking place. The Flood
15 Division, at which Stein Buer was the guest speaker at
16 District 108 and the meeting on the enlarged state park in
17 Colusa.

18 Next, as a Board, we decided that all information
19 on which we were to act had to reach us before Board
20 meetings. However, there are still occasions when
21 last-minute information comes in to us and a vote is
22 expected.

23 I also walked into the Sutter Bypass after I was
24 told that gravel was hauled in there for a full week, one
25 truck after the other, three years ago, not just a

1 truckload, but a succession of trucks daily. I went in
2 after the morning hunt, and of course the birds were
3 resting, and so up I went a mile and a half, and the poor
4 birds were resting so I left. So anyway, I guess it's all
5 those roads in there, but I think they can build them up
6 to 36 inches; is that right?

7 SUPERVISING ENGINEER FUA: Well, that 36 inches
8 requirement is for the Butte Basin. I don't know about
9 the Sutter Bypass.

10 CHIEF ENGINEER BRADLEY: I think the same
11 exemption exists for the Sutter Bypass and Yolo Bypass is
12 that, you know, crop checks or cross levees, if you want
13 to call them that, less than 36 inches aren't normal. I
14 will check that real quick, but I think that's part of the
15 standards.

16 PRESIDENT CARTER: But if they are building up,
17 that's 36 inches above natural grade, and the roads have
18 already been built and they are building them up more, we
19 have to go back to baseline, I believe; don't we?

20 SECRETARY DOHERTY: Supposedly there was a
21 building pad put in there, but, like I said, I was
22 disturbing the birds and I felt kind of bad and I felt
23 that Fish and Game were going to come after me. Anyway,
24 so I better get out of there.

25 PRESIDENT CARTER: Okay.

1 SECRETARY DOHERTY: So those are my concerns.

2 PRESIDENT CARTER: Thank you.

3 Rose Marie?

4 MEMBER BURROUGHS: I do not have anything to
5 report, but I would like to hear from Jay about the
6 interagency meeting.

7 PRESIDENT CARTER: Okay. He'll do that as part of
8 his manager report.

9 GENERAL MANAGER PUNIA: I'm done with the general
10 manager report, but on this item, I don't recall attending
11 it. Dan, there was a meeting?

12 SUPERVISING ENGINEER FUA: There is no meeting
13 this month.

14 GENERAL MANAGER PUNIA: So it was canceled, the
15 meeting was.

16 PRESIDENT CARTER: Okay. And I will talk about
17 the levee vegetation roundtable.

18 Mr. Brown?

19 MEMBER BROWN: I will be off the next two weeks,
20 but you can reach me on my cell phone if you have any
21 questions I can assist you in. And when I get back, if
22 you would like, I would check with the chairperson at
23 State Water Board and see if they have an attorney they
24 could loan us.

25 PRESIDENT CARTER: Okay. I would like to try and

1 get something in place hopefully before you get back.

2 MEMBER BROWN: I can make a call when I get up
3 there to see if I can do it by phone.

4 PRESIDENT CARTER: Or just --

5 MEMBER BROWN: And have them give you a call.

6 PRESIDENT CARTER: Grease the skids, at least.
7 That would be great. I appreciate that.

8 MEMBER BROWN: Yes, sir.

9 PRESIDENT CARTER: We've had rather extensive
10 discussion regarding the transition due to legislation.
11 In case any of you missed it, there is another meeting
12 between Rec Board executive, which is Butch and myself,
13 and DWR executive about the transition. There have been
14 discussions between the two meetings, between our staff
15 and DWR staff, regarding the organizational changes and
16 shifts. Those discussions are ongoing.

17 I will endeavor to have independent counsel
18 representing us on Monday. That meeting is at 9 o'clock
19 on Monday, at the -- in the director's DWR director's
20 office. So hopefully we can get somebody on tap.

21 At a minimum, Scott Morgan has agreed to attend in
22 the absence of other independent counsel. So we will have
23 some counsel representing us. And to his credit, he's in
24 a difficult position, but he's done a good job so far, I
25 believe.

1 The levee roundtable, our last meeting, was
2 October 12th. Since our last board meeting, there have
3 been a number of discussions. The last meeting was a kind
4 of a general discussion about the preplan and the plan
5 for, in general, levee maintenance and management in the
6 state of California. The scope has expanded beyond just
7 vegetation to include all aspects of levee management,
8 shall we say, in the Sacramento-San Joaquin Drainage
9 District, and that was at the request primarily of the
10 Corps.

11 They are very, very interested in more of a
12 systematic or systemwide approach, at a minimum, a
13 drainage area approach, to look at the system. So we're
14 proceeding with that.

15 There is still an issue. So that you know, in
16 terms of funding, the consultant -- as you all know, Bill
17 Reckmeyer we engaged him in terms of helping us, being a
18 strategic advisor, and a facilitator. He is completely
19 independent of DWR and any of the other agencies, has not
20 worked with or for any of the other agencies before, has
21 been a big help in terms of neutralizing a lot of the
22 potential potholes that were before us. But we still
23 remain to get commitment from any of the state agencies
24 which -- that being DWR, Reclamation Board, Fish and Game,
25 in terms of funding his commitment. And also the Corps.

1 The Fish and Wildlife Service and NOAA Fisheries have both
2 said that they will, then can, fund it. And the amount of
3 money that we're talking about for each individual agency
4 is on the order of about \$10,000, each. So collectively,
5 we're looking at around 50,000, 60,000 to fund the effort
6 through the end of April.

7 The schedule, as you may recall, has slipped one
8 month. It was scheduled to complete on April 1. In fact,
9 actually, it was March 1, because that was the Corps'
10 deadline for the local maintaining agency to get back with
11 them and be in compliance. That has slipped a month.
12 Everybody's aware of that. And that was primarily due to
13 DWR has been charged with putting together the preliminary
14 plan, and that slipped as a result of workload,
15 essentially.

16 Final thing I had was I attended the meeting last
17 night sponsored by the Nature Conservancy, the Sacramento
18 River Conservation Area Forum, and attended heavily by
19 DWR, about the Colusa Subreach Study, where the Nature
20 Conservancy and/or the State own eight properties that --
21 inside the levees between Princeton and Colusa. They are
22 looking to do some habitat restoration on those
23 properties. And they had a hydraulic analysis that they
24 presented last night that was done by Ayers and
25 Associates. It was a two-dimensional analysis of the

1 entire reach, essentially from slightly north of Princeton
2 all the way south, to the Colusa bridge. A very
3 interesting analysis.

4 One of the major conclusions of the hydraulic
5 analysis, and also supported by actual data, historical
6 data, is that the system in that reach is not performing
7 as designed, at design flows. It turns out the Moulton
8 Weir and the Colusa Weir are taking significantly more
9 flows off of the river, off of the main stem of the
10 Sacramento, than they were designed. In fact, don't quote
11 me on these numbers, but I believe the Moulton Weir was
12 designed for 25 to 26 thousand CFS; and in 1970, it took
13 35,200 CFS. So 50 percent more than designed. The Colusa
14 Weir designed for 60,000, more or less, took a little over
15 80,000 in another year.

16 And in fact, the main stem of the Sacramento
17 River, which is at the Colusa bridge, is rated at, I
18 believe, 60 or 63 thousand CFS, has never reached that, or
19 they don't have records of it reaching it. And they
20 predict that it will never reach that design because the
21 water will be shunted off the river at the weirs.

22 They still have no conclusions as to the
23 cumulative impacts of the restoration sites along that
24 stretch of the river. They are still working with a
25 hydraulic model. But it was interesting. It was attended

1 by, I'm guessing, about ten local people and about 25
2 agency people or representatives.

3 So again, the ratio of, you know, local interest
4 versus proponents and agency folks is backwards, in my
5 opinion.

6 SECRETARY DOHERTY: When they gave that
7 previously, they said that stretch of the river was
8 sediment starved.

9 PRESIDENT CARTER: That's not the conclusion
10 they --

11 SECRETARY DOHERTY: That's what they said at the
12 last one I went to. It was the same presentation that you
13 got last night.

14 PRESIDENT CARTER: No. They didn't say that last
15 night. They said, in fact, the sediment is moving. They
16 had a particular graph that showed the --

17 SECRETARY DOHERTY: Tom Smith did it; right?

18 PRESIDENT CARTER: Tom Smith did it.

19 What are the low spots in the river called?

20 SECRETARY DOHERTY: Thalwegs.

21 PRESIDENT CARTER: Thalwegs. And they showed the
22 migration of thalwegs and where the thalwegs were at the
23 various points of -- at the various points in time when
24 the river was surveyed. And they did not say that the
25 river was sediment starved at that time.

1 SECRETARY DOHERTY: That's interesting.

2 PRESIDENT CARTER: It's a natural process of the
3 river moving the sediment around, but it's not starved.
4 Or I did not take it that way.

5 But the people to contact, if you're interested in
6 that, Tom Smith from Ayers is the one doing the model.
7 They are going to be presenting it to the Advisory Work
8 Group, and I don't recall the date. But you can talk to
9 Gregg Werner from the Nature Conservancy. He's the
10 project manager. He can give you any of the particulars,
11 and you can probably go on the Web site if you are
12 interested.

13 And that's all I have.

14 Are there any questions from the Board for me?

15 MEMBER BURROUGHS: Well, I do have a question in
16 regard to this information that we received in our packet.
17 It's an office memo from Ward Tabor.

18 PRESIDENT CARTER: That's attorney-client
19 privilege. We probably shouldn't discuss that in public
20 session.

21 MEMBER BURROUGHS: I'm not discussing it. I only
22 want to discuss that the information in here, we need to
23 be able to have on our agenda to be able to look at some
24 of the recommendations.

25 PRESIDENT CARTER: Okay. Nancy?

1 LEGAL COUNSEL FINCH: That's not intended to be an
2 agendized item. That was an attorney-client privilege
3 opinion for the Reclamation Board members to review. As
4 part of this transition, giving information to the
5 Reclamation Board, there might have been some confusion on
6 that one.

7 PRESIDENT CARTER: Our intent is to get our own
8 attorney's opinion, which means our independent counsel's
9 opinion on the same issues.

10 LEGAL COUNSEL FINCH: But I believe those were
11 passed on through Scott Morgan; is that correct? And so
12 it's through him where I believe he asked different
13 attorneys to help them with this project, and then he
14 forwarded them through his attorney-client privilege to
15 the Board members.

16 MEMBER BURROUGHS: Okay. And as a Board member, I
17 have concerns about some of the recommendations. And I
18 just want to make sure that as we proceed forward, that we
19 have an opportunity to make sure that we can implement
20 whatever is necessary in preparing for our Board in
21 January.

22 PRESIDENT CARTER: What I would suggest you do in
23 that case is talk to either myself or Jay about your
24 concerns and we can bring those to the table as part of
25 this discussion we're having with DWR. And eventually,

1 the -- it will all come before the Board.

2 Any other questions?

3 Okay. Then we're on to -- why don't we take just
4 a ten-minute break. People want to take a ten-minute
5 break?

6 MEMBER BURROUGHS: Let's finish.

7 PRESIDENT CARTER: Okay.

8 You're finished with your general manager's
9 report?

10 GENERAL MANAGER PUNIA: Yes. I don't have
11 anything else unless the Board members have any question
12 on any of the items.

13 MEMBER RIE: I have a question.

14 GENERAL MANAGER PUNIA: Sure.

15 MEMBER RIE: Earlier in the meeting, you said that
16 the staff couldn't investigate the Atlas Tract item
17 because you guys were really busy. And I was just curious
18 what are you guys working on that we haven't received a
19 weekly update for months and months. So I don't -- and
20 there's not that many items on the agenda for December, so
21 I was just curious what all you guys are working on.

22 GENERAL MANAGER PUNIA: I think we have a -- I
23 think we will discuss this under board items. We have
24 Sutter County project, SAFCA's three applications, and we
25 have the TRLIA's application for issuing a permit. So

1 there is quite a big workload to review all the
2 information associated with these major projects. So
3 there's -- I'm a little bit surprised by the comment that
4 we don't have too much to do. There's a substantial
5 amount which is going on at this time to review all these
6 projects and keep them on schedule so that we can bring it
7 to the Board as was requested by the applicants. These
8 are major, major projects.

9 MEMBER RIE: I don't think there was any question
10 as to that you didn't have enough work. It was just, what
11 is it?

12 GENERAL MANAGER PUNIA: Yeah. So these are major
13 projects which we are planning to bring to the Board as
14 soon as possible. And I think the applicants are
15 concerned that we may not be able to address these permits
16 after December 31st, so they are pushing it to bring it to
17 the Board, December 31st to the Board.

18 MEMBER RIE: Okay. And then my other question is,
19 do we still have staff assistance from DWR to review
20 permits and applications?

21 GENERAL MANAGER PUNIA: Yes. The regular staff --
22 I think, Steve Dawson is sitting here, so he provides
23 major support to us to review the application and issue
24 the permit. The answer is yes.

25 MEMBER RIE: Okay.

1 PRESIDENT CARTER: Let's move on to future agenda,
2 find out what we've got on our plate for December 21st.
3 There was one question. Do we -- is everybody comfortable
4 having a meeting on December 21st? Can everyone attend on
5 December 21st? First day of winter; isn't it? Okay.
6 Very good. So we will meet on December 21.

7 The first page is pretty standard although as
8 Ms. Barnes mentioned this morning, we would expect to
9 spend more time on Item 2, in the closed session,
10 regarding the litigation. So we'll have to budget extra
11 time for that, probably. We'll see how settlement
12 discussions continue.

13 MEMBER BURROUGHS: Yes. I have a question in
14 regards to the agenda for December. I think it's very
15 necessary that we do have a Board meeting. However, I was
16 wondering if it's possible that with all the work that we
17 have in place, that this Board meeting could be designated
18 only in preparation for January in the whole -- whatever
19 we need to work on for our Board composition and how we're
20 going to function, and not take any permits at all.

21 SECRETARY DOHERTY: And have a reorganizational
22 meeting?

23 PRESIDENT CARTER: That's certainly okay for the
24 Board. It's up to the Board to decide what they want to
25 do and what kind of business they want to conduct in

1 December.

2 MEMBER BURROUGHS: I think to have continuity and
3 to be able to function and the amount of unknown where
4 we're at right now, today, I would like to propose that
5 our agenda be limited to our reorganization for January.

6 PRESIDENT CARTER: Okay.

7 MEMBER SUAREZ: Mr. President?

8 PRESIDENT CARTER: Ms. Suarez?

9 MEMBER SUAREZ: I was wondering if Board members
10 would consider having a special meeting, maybe Thursday,
11 in the afternoon, spend the afternoon discussing the
12 transition issues, and then still have the Friday meeting
13 as an opportunity to move some of the permit things.

14 MEMBER BURROUGHS: I would be open to having
15 another meeting in December, but only if we have resolved
16 all the reorganization issues.

17 And then one other suggestion I think we might
18 consider, that depending on how things fly out, I would
19 like to have a noticed meeting weekly for the whole month
20 in case we need to meet for reorganization.

21 PRESIDENT CARTER: Okay. Which is also doable.
22 We can draft an agenda, notice it properly for weekly --
23 let's see, we're here on the 26th. So we could
24 potentially have one for -- are you saying in November or
25 December?

1 MEMBER BURROUGHS: I think as soon as possible
2 throughout the rest of the year. Whatever's the first
3 date available for the ten-day notice.

4 PRESIDENT CARTER: So realistically, it would have
5 to be the 7th of December, 14th, and then we would have
6 the regular Board meeting on the 21st. And those are the
7 Fridays.

8 And if we need to have the meetings, we can hold
9 them. If we feel that the meetings are not necessary,
10 then we can postpone them.

11 MEMBER BURROUGHS: I think that we need to give
12 ourselves all of the flexibility and room we need to, to
13 prepare for January.

14 PRESIDENT CARTER: Okay.

15 MEMBER RIE: I'm okay with that. But I think we
16 need to -- there's a couple permit applications where
17 there's a lot of public interest, that the public may want
18 to come and speak, and the TV cameras may want to come and
19 film us.

20 MEMBER BURROUGHS: I agree. But I think
21 priority -- we have to prioritize the function of our
22 Board. And we -- if everything's in place and our
23 reorganization is in place and our staff and all that
24 needs to happen is completed, then that would be okay.
25 But I don't see it happening, myself.

1 I would strongly recommend that we do not hear
2 permits in the month of December.

3 PRESIDENT CARTER: Okay.

4 Ms. Suarez?

5 MEMBER SUAREZ: To me, it's important that we
6 transact some business, and I would support -- that would
7 be what I would support. I understand the need for
8 additional meetings, absolutely to talk about transition
9 issues.

10 I do believe that the transition issues are that
11 insurmountable. Actually, I think they are very
12 manageable. That's why I feel confident we could spend a
13 day working on real business.

14 PRESIDENT CARTER: Okay. All right. So does
15 it -- are there any objections to going ahead and noticing
16 weekly meetings in December? And then those meetings will
17 be held subject to, basically, discretion of the
18 president, vice president, and staff. And then we'll
19 notify the members as to whether or not those meetings
20 will be held. Those meetings will probably need to take
21 place at the JOC. I don't know if this room is available,
22 but we will determine an appropriate venue for those.

23 VICE PRESIDENT HODGKINS: And the purpose of those
24 meetings would be basically to talk about where we are and
25 what the decisions are in front of us. So you know,

1 because if you make any decisions, you are going to have
2 that on the agenda, you get out, and then ten days ahead
3 of time, and that's more difficult. So these would be
4 primarily almost workshops on where we're headed with
5 these changes in the regulations.

6 GENERAL MANAGER PUNIA: President Carter might
7 want to chat with us. It's not a bad idea.

8 VICE PRESIDENT HODGKINS: I think it's a good
9 idea.

10 PRESIDENT CARTER: If nothing else, get the
11 Board's feedback on what direction we have or what
12 direction we're headed, and that would be very, very
13 helpful in the process of going through this transition.

14 VICE PRESIDENT HODGKINS: It also keeps staff out
15 of having to do a lot of work for the Board meeting in
16 terms of the report, although it may not keep the general
17 manager and you and I from having to do some work.

18 MEMBER BROWN: Are you talking about a separate
19 meeting like on Thursday?

20 PRESIDENT CARTER: We're talking about initially
21 is to have a meeting on the 7th of December and the
22 14th of December, Fridays, to essentially discuss and
23 address the status of the transition process as a result
24 of the legislation.

25 MEMBER BROWN: The 7th and the 4th?

1 PRESIDENT CARTER: The 7th and the 14th. And our
2 regular Board meeting is the 21st. So this would be an
3 agenda, a one-pager, that has one item on it, or maybe
4 two. If we have roll call and adjourn, maybe three. And
5 it would be specifically agendized to address the
6 transition.

7 MEMBER BROWN: In the morning?

8 PRESIDENT CARTER: What's the pleasure? What's
9 best for people?

10 MEMBER SUAREZ: Not before 9:00, please.

11 MEMBER RIE: 10:00.

12 PRESIDENT CARTER: So from 10:00 to noon.

13 MEMBER BROWN: 10 o'clock on the 7th?

14 SECRETARY DOHERTY: 10:00 to 2:00?

15 MEMBER BROWN: 10:00 to 2:00?

16 PRESIDENT CARTER: 10:00 to 2:00 on the 7th and
17 the 14th.

18 GENERAL MANAGER PUNIA: If I may make one
19 suggestion. I think if the Board will delegate this to
20 the president and vice president, they will assess the
21 need of these meetings based upon the progress they are
22 making. And then if there's a need, then we will have the
23 meeting. Otherwise, there's no meeting.

24 PRESIDENT CARTER: Correct. If we don't have
25 anything to discuss, we won't meet. If there's something

1 substantive that Butch and I need to get feedback from the
2 Board on, we'll meet.

3 MEMBER BROWN: Okay. We'll put a question mark by
4 each of these then.

5 GENERAL MANAGER PUNIA: Tentatively scheduled, but
6 they will be firmed up based upon the progress or if the
7 president and vice president need your feedback on the
8 Board.

9 PRESIDENT CARTER: So those notices can go out on
10 Monday?

11 SENIOR ENGINEER BUTLER: May I ask a question?

12 PRESIDENT CARTER: Yes, sir.

13 SENIOR ENGINEER BUTLER: My question is, is
14 there -- we're looking at potential for up to six
15 applications under requested actions in December.

16 Is there -- in order to free up as much time as
17 possible to hear those actions, should they come to
18 fruition, is there any possibility of moving some of the
19 regularly agendized, other items, up a week, if we had
20 that December 14th meeting, to give us more time on the
21 21st, to hear permit application discussions?

22 PRESIDENT CARTER: There's a possibility. I don't
23 know if the applicants or the staff will be ready.

24 Maybe a better option would be one to have those
25 heard the Thursday before. The point of the 7th and the

1 14th is to protect time specifically for transition
2 discussions and not permit.

3 SENIOR ENGINEER BUTLER: I wasn't suggesting
4 moving the permits. I am suggesting, for instance,
5 informational briefings, report of the activities of the
6 Department of Water Resources. Could those items be moved
7 up?

8 SECRETARY DOHERTY: If we just took the written
9 and didn't have the oral?

10 SENIOR ENGINEER BUTLER: Or just move them into
11 one of the earlier meetings. I'm afraid there's a
12 possibility you may have -- that the requested actions for
13 applications may be quite time consuming on the 21st. I'm
14 just looking for flexibility.

15 PRESIDENT CARTER: We'll plan to spend Christmas
16 here.

17 That's a possibility.

18 MEMBER RIE: What about moving the closed session
19 to the 7th or the 14th?

20 PRESIDENT CARTER: Again, that's not protecting
21 the time for the intended purpose. But that is -- I am
22 just raising that. It's really a decision the Board --
23 it's up to the Board.

24 LEGAL COUNSEL FINCH: May I suggest that the Board
25 remain open to adding a closed session, if necessary?

1 Because that could be helpful.

2 PRESIDENT CARTER: And we're not sure whether or
3 not that's going to even be ready on the 14th.

4 MEMBER RIE: We'll leave it up to you, Ben. Do
5 what you want.

6 SECRETARY DOHERTY: Somebody do something.

7 MEMBER RIE: You decide what we talk about and
8 when we meet.

9 PRESIDENT CARTER: Okay. So we're going to
10 agendize December 7th, December 14th, and then we have our
11 regularly scheduled meeting on the 21st.

12 Is there an interest to have a meeting on the
13 20th, the Thursday before? And that would be to conduct
14 business.

15 MEMBER SUAREZ: Yeah. Sure. If there's a
16 workload coming up Friday, it might be worth getting
17 informational items, the legal briefing, the closed door
18 session, all those things done on Thursday.

19 VICE PRESIDENT HODGKINS: That's a good idea.

20 GENERAL MANAGER PUNIA: But the trouble is, if you
21 have three or four meetings, my staff may not have the
22 time to work on these permits, which are very critical
23 permits.

24 PRESIDENT CARTER: What they are going to be doing
25 is working on those permits, and they are either going to

1 be heard on Thursday or Friday. So we are not going to
2 change what they are doing, and they are not going to
3 change their pace of the work other than one or two might
4 be heard the day before than what is scheduled for now.

5 GENERAL MANAGER PUNIA: It takes quite a bit of
6 effort to arrange a meeting and to have a staff here to
7 have them working on the permits, but it's the Board's
8 desire.

9 SECRETARY DOHERTY: We won't need the entire
10 staff.

11 PRESIDENT CARTER: For the 7th and for the 14th,
12 we don't need the entire staff. We need legal counsel, we
13 need you, and probably one other person, so staff can --

14 MEMBER BURROUGHS: Lorraine, do you want to make a
15 comment?

16 STAFF ASSISTANT PENDLEBURY: I just wanted to make
17 the comment, because I'm always thinking of meeting
18 organization, we would want to have the transcription
19 service, I would think, if it's a public meeting; you want
20 a third-party transcription. Plus on Thursday, we're not
21 even sure that we could get this room.

22 Are you suggesting that we meet at the JOC for
23 permit items?

24 MEMBER BURROUGHS: Whenever you find a room
25 available for the 7th and the 14th.

1 STAFF ASSISTANT PENDLEBURY: Because I suspect
2 when you are dealing with permit issues, you will have a
3 larger audience.

4 MEMBER BURROUGHS: That's on the 21st. That's our
5 regular schedule. We were talking about having it on the
6 20th, discussing.

7 MEMBER SUAREZ: We wouldn't be doing permits on
8 Thursday. We will be talking about the other issues, the
9 legal briefings, some of the other issues.

10 PRESIDENT CARTER: We may move things like the
11 closed session. We will need a recorder. But we may not
12 need a huge room for some of these other things. Maybe we
13 will talk about Title 23. We get DWR's report. And talk
14 about the status of flood preparedness. Those kinds of
15 things.

16 MEMBER RIE: And I think we're all open to pretty
17 much anything at this point. And we'll just leave it up
18 to you guys to work it out.

19 PRESIDENT CARTER: Okay. The only thing that's
20 not on the draft agenda before you that we discussed today
21 was the M&T discussion. So we will try and work that in
22 to one of those days, either the Thursday or Friday.

23 MEMBER BURROUGHS: Whatever you find works.

24 PRESIDENT CARTER: We will attempt to protect the
25 7th and the 14th for transition discussions only.

1 Anything else to add to the future agenda?

2 Okay. Then ladies and gentlemen, we are

3 adjourned.

4 (The Reclamation Board meeting adjourned at

5 4:09 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, KATHRYN S. SWANK, a Certified Shorthand Reporter
3 of the State of California, do hereby certify:

4 That I am a disinterested person herein; that the
5 foregoing Reclamation Board Meeting, was reported in
6 shorthand by me, Kathryn S. Swank, a Certified Shorthand
7 Reporter of the State of California, and thereafter
8 transcribed into typewriting.

9 I further certify that I am not of counsel or
10 attorney for any of the parties to said meeting nor in any
11 way interested in the outcome of said meeting.

12 IN WITNESS WHEREOF, I have hereunto set my hand this
13 28th day of November, 2007.

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21
22 KATHRYN S. SWANK, CSR

23 Certified Shorthand Reporter

24 License No. 13061
25

